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Part 1

General Provisions

10-1-101. Definitions. Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Department" means department of military affairs.

(2) "Militia" means all the military forces of this state, whether organized or active or inactive.

(3) "National guard" means the army national guard and the air national guard.

(4) "Officer" means commissioned or warrant officer.

History: En. 77-1601 by Sec. 25, Ch. 94, L. 1974; amd. Sec. 7, Ch. 49, L. 1977; R.C.M. 1947, 77-1601.

Cross-References

Department of Military Affairs created, 2-15-1201.

10-1-102. Powers and duties of department of military affairs. Under the direction of the governor, the department shall:

(1) keep a roster of all officers and enlisted persons of the militia of this state whether active, inactive, or retired;

(2) supervise, administer, and coordinate civil defense and disaster control activities;

(3) recruit, mobilize, administer, train, discipline, equip, and supply the organized militia;

(4) maintain the archives and keep the records and documents required by law or regulation to be filed with the United States department of defense;

(5) establish and maintain the headquarters required for the militia;

(6) exercise the powers vested in it and perform any other duty and function required of it by the governor and by federal and state laws and regulations.

History: En. 77-1606 by Sec. 30, Ch. 94, L. 1974; amd. Sec. 8, Ch. 49, L. 1977; R.C.M. 1947, 77-1606.

Cross-References

Department power to authorize construction on federal land, 18-2-102.

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Montana Historical Society directed to store certain war records, 22-3-221.

10-1-103. Classes of militia. The classes of the militia are:

(1) the organized militia, which consists of the national guard and the Montana home guard;

(2) the unorganized militia, which consists of the members of the militia who are not members of the organized militia.

History: En. 77-1602 by Sec. 26, Ch. 94, L. 1974; R.C.M. 1947, 77-1602.

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.

"Militia" defined, 10-1-101.

Composition of home guard, 10-1-701.

10-1-104. Federal regulations to govern. Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the militia, including The Uniform Code of Military Justice, shall, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the military forces of this state, including all members of the national guard on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32, U.S.C.

History: En. 77-1603 by Sec. 27, Ch. 94, L. 1974; R.C.M. 1947, 77-1603; amd. Sec. 1, Ch. 430, L. 1983.

10-1-105. Rules by governor. The governor may prescribe rules to carry out his functions and duties under this title and the constitution of this state. These rules must conform to any applicable federal laws and regulations.

History: En. 77-1604 by Sec. 28, Ch. 94, L. 1974; R.C.M. 1947, 77-1604.

Cross-References

State militia exempt from public participation and administrative procedures concerning rulemaking, 2-3-102, 2-4-102.

10-1-106. Proclamation of martial rule. When the militia is employed in aid of civil authority, the governor may by proclamation declare any part of a county or municipality in which troops are serving to be subject to martial rule.

History: En. 77-1605 by Sec. 29, Ch. 94, L. 1974; R.C.M. 1947, 77-1605.

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Limitations on powers of militia, 10-3-102.

Governor as commander-in-chief during emergencies, 10-3-305.

10-1-107. Property remains public property. All property issued to organizations and members of the organized militia remains public property.

History: En. 77-2001 by Sec. 51, Ch. 94, L. 1974; R.C.M. 1947, 77-2001.

Cross-References

Damage or destruction of public property unlawful, 45-6-101.

10-1-108. Armories. (1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.

(2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build an armory. The armory must be of sufficient size and suitable for the drill of the unit.

History: En. 77-2006 by Sec. 56, Ch. 94, L. 1974; R.C.M. 1947, 77-2006.

Cross-References

Use of armories by home guard, 10-1-703.

Fire protection — armories, Title 50, ch. 61.

10-1-109. Lease of real property for military facilities. The department of military affairs may lease real property for armories or other military facilities.

History: En. 77-2007 by Sec. 57, Ch. 94, L. 1974; R.C.M. 1947, 77-2007.

Cross-References

Use of armories by home guard, 10-1-703.

10-1-110. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 1, Ch. 135, L. 1965; amd. Sec. 1, Ch. 114, L. 1967; R.C.M. 1947, 53-106.7; amd. Sec. 1, Ch. 306, L. 1983.

Part 2

Officers of Militia

10-1-201. Officers. (1) The governor shall appoint all officers of the militia.

(2) Officers must be citizens of the United States.

(3) Before a person can be appointed an officer by the governor, he shall be examined and adjudged qualified to be an officer by an examining board. The composition, appointment, and examination procedure of the board and the nature and scope of examinations shall be prescribed by federal law or regulation or state regulations.

(4) Each officer shall hold office under his appointment until he is regularly appointed to another grade or office or until he is regularly retired, discharged, dismissed, or placed in the reserve.

History: En. 77-1701 by Sec. 31, Ch. 94, L. 1974; R.C.M. 1947, 77-1701.

Cross-References

Militia officers commissioned by the Governor, 2-16-204.

"Officer" defined, 10-1-101.

Pay and allowances, 10-1-502.

Allowances for incidental expenses, 10-1-503.

Authority to arrest, 10-1-611, 10-1-612.

Medical officers exempt from medical license requirements, 37-3-103(1)(i).

10-1-202. Oath of office. (1) Except when a comparable oath is subscribed to under federal law or regulation, every officer shall take and subscribe to the following oath of office:

"I, ..., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the president of the United States and the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of .... in the .... upon which I am about to enter, so help me God."

(2) If an officer refuses or neglects to take the oath, he shall be considered to have resigned the office and a new appointment shall be made.

History: En. 77-1702 by Sec. 32, Ch. 94, L. 1974; R.C.M. 1947, 77-1702.

Cross-References

Oath of enlistment, 10-1-302.

10-1-203. Retirement of officers. (1) An officer of the national guard shall be retired by order of the governor for the following reasons:

(a) upon reaching his 60th birthday; or

(b) his unfitness for military service because of a physical disability.

(2) An officer is retired with the grade and rank held by him at the time of retirement.

History: En. 77-1703 by Sec. 33, Ch. 94, L. 1974; R.C.M. 1947, 77-1703.

Cross-References

Examination as to fitness for military service, 10-1-206.

Members of National Guard considered state employees, 19-3-402.

Election to qualify military service under Public Employees' Retirement System, 19-3-503.

10-1-204. Resignation of officers. An officer may resign, but the resignation is not effective until it has been accepted by the governor.

History: En. 77-1704 by Sec. 34, Ch. 94, L. 1974; R.C.M. 1947, 77-1704.

Cross-References

Governor to commission all militia officers, 2-16-204.

Governor to appoint all militia officers, 10-1-201.

10-1-205. Vacating commissions or warrants. The commission or warrant of an officer shall be vacated:

(1) upon acceptance by the governor of the resignation of the officer; or

(2) by an order of the governor discharging the officer:

(a) for failure to maintain his qualifications for federal recognition;

(b) upon the scheduled or actual termination or withdrawal of his federal recognition where federal recognition is a prerequisite for continued service;

(c) upon a change in federal reserve status which makes him ineligible to continue assigned to a unit of the organized militia;

(d) for his absence from duty without leave for more than 3 months; or

(e) upon the recommendation of a board of examination or the sentence of a court-martial.

History: En. 77-1705 by Sec. 35, Ch. 94, L. 1974; amd. Sec. 9, Ch. 49, L. 1977; R.C.M. 1947, 77-1705.

Cross-References

Federal regulations to govern militia, 10-1-104.

Persons subject to jurisdiction of military courts, 10-1-402.

10-1-206. Examination as to fitness — board of examination. (1) The governor, when he considers it necessary, may order an officer to appear before a board of examination. The board of examination shall consist of three officers, senior in rank to the officer whose fitness for service is under examination. The board may:

(a) inquire into the fitness for military service due to physical disability of an officer under 10-1-203(1)(b);

(b) inquire into the moral character, capacity, and professional fitness of an officer in order to make a recommendation under 10-1-205(2)(e).

(2) The board, under 10-1-203(1)(b), may recommend the retention of the officer being examined or his retirement because of a physical inability to perform active service.

(3) The board, under 10-1-205(2)(e), may recommend the discharge and the vacating of his commission or warrant.

(4) The findings of the board become effective only upon the approval of the governor.

History: En. 77-1706 by Sec. 36, Ch. 94, L. 1974; R.C.M. 1947, 77-1706.

Cross-References

National Guard officers retired by Governor, 10-1-203.

10-1-207. Uniform allowance for officers. (1) Every officer of the organized militia shall, within 60 days from the date of the order whereby he is appointed, provide himself, at his own expense, with the uniforms and equipment prescribed by the department for his rank and assignment.

(2) There shall be paid annually on April 1 a uniform allowance to each properly uniformed and equipped officer of the organized militia.

History: En. 77-1707 by Sec. 37, Ch. 94, L. 1974; R.C.M. 1947, 77-1707.

Cross-References

Pay and allowances, 10-1-502.

Allowances for incidental expenses, 10-1-503.

10-1-208. Officer need not vacate civil office. A person may be an officer in the militia or in a reserve component of the armed forces of the United States without vacating a civil office or position in this state.

History: En. 77-1708 by Sec. 38, Ch. 94, L. 1974; R.C.M. 1947, 77-1708.

Cross-References

Depriving members of organized militia of employment, 10-1-603.

Leave of absence for public employees attending military training, 10-1-604.

Part 3
Enlisted Members

10-1-301. Terms of enlistment. Except as otherwise provided by federal law or regulation, enlistments, reenlistments, and extension of enlistments shall be for periods as prescribed by the department.

History: En. 77-1801 by Sec. 39, Ch. 94, L. 1974; R.C.M. 1947, 77-1801.

Cross-References

Governor authorized to extend terms of enlistment, 10-1-303.

Pay and allowances, 10-1-502.

10-1-302. Oath of enlistment. (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or reenlists shall take and subscribe to the following oath of enlistment:

"I hereby acknowledge to have voluntarily enlisted this .... day of .... in the .... of the United States and the state of Montana for a period of .... years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies, and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any officer of the organized militia or any officer of the armed forces of the United States, detailed to duty with any component of the organized militia of this state, may administer the oath of enlistment to enlisted men.

History: En. 77-1802 by Sec. 40, Ch. 94, L. 1974; R.C.M. 1947, 77-1802; amd. Sec. 2, Ch. 430, L. 1983.

Cross-References

Officer's oath, 10-1-202.

10-1-303. Extension of terms of service. If an emergency is declared by the president, congress, the governor, or the legislature, the governor may by proclamation, in accordance with federal and state law and regulation, extend the enlistment of an enlisted member of the organized militia until 6 months after the termination of that emergency.

History: En. 77-1803 by Sec. 41, Ch. 94, L. 1974; R.C.M. 1947, 77-1803.

Cross-References

Emergency powers of Governor generally, Title 10, ch. 3.

10-1-304. Retirement of enlisted members. An enlisted member of the national guard shall be retired by order of the governor for the following reasons:

(1) upon reaching his 60th birthday; or

(2) his unfitness for military service because of a physical disability.

History: En. 77-1804 by Sec. 42, Ch. 94, L. 1974; R.C.M. 1947, 77-1804.

Cross-References

Members of National Guard considered state employees, 19-3-402.

Election to qualify military service under Public Employees' Retirement System, 19-3-503.

Part 4
Military Courts

10-1-401. Courts — composition, jurisdiction, powers, and procedures. The military courts for the militia shall be constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures of those courts. The convening authority for these military courts and maximum punishments authorized shall be as prescribed by federal and state law and regulation applicable to the national guard.

History: En. 77-1901 by Sec. 43, Ch. 94, L. 1974; R.C.M. 1947, 77-1901.

Cross-References

Federal regulations to govern, 10-1-104.

Rules by Governor, 10-1-105.

10-1-402. Persons subject. All members of the organized militia and all other persons lawfully called, ordered, or drafted for duty in the organized militia are subject to this part from the dates they are required by the terms of the call, order, or other directive to serve.

History: En. 77-1902 by Sec. 44, Ch. 94, L. 1974; R.C.M. 1947, 77-1902.

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.

10-1-403. Territorial applicability. (1) This part is applicable in all places in this state. It also applies to all persons while serving outside this state and while going to and returning from service outside this state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while serving outside this state. These courts serve with the same jurisdiction and powers as if held in this state. Offenses committed outside this state may be tried and punished either in or out of this state.

History: En. 77-1903 by Sec. 45, Ch. 94, L. 1974; R.C.M. 1947, 77-1903.

Cross-References

Cession and retrocession of state jurisdiction generally, Title 2, ch. 1, part 2.

State criminal jurisdiction, 46-2-101.

10-1-404. Persons authorized to execute process. All processes, writs, warrants, and sentences of military courts shall be directed to and executed by any sheriff or any officer or member of the police department of any county or municipality. These documents shall be in the same form as processes, writs, or warrants issued by civil courts. All officers to whom a process, writ, or warrant is directed shall execute it and make return thereof to the officer issuing it.

History: En. 77-1904 by Sec. 46, Ch. 94, L. 1974; R.C.M. 1947, 77-1904.

Cross-References

Service of process on military reservations, 2-1-204.

Return of process generally, Title 25, ch. 3, part 6.

10-1-405. Confinement of persons committed by military court. The keepers of a municipal or county jail shall receive a person committed to them by a military court and shall confine him in accordance with the direction of the court.

History: En. 77-1905 by Sec. 47, Ch. 94, L. 1974; R.C.M. 1947, 77-1905.

Cross-References

County jails, Title 7, ch. 32, part 22.

Municipal jails, Title 7, ch. 32, part 42.

10-1-406. Reporter and witness fees. A witness subpoenaed to appear before a military court shall receive the same fee as provided by law for witnesses appearing in a civil court. The reporter of a court shall be paid for stenographic services the same as provided by law for similar services in civil courts.

History: En. 77-1906 by Sec. 48, Ch. 94, L. 1974; R.C.M. 1947, 77-1906.

Cross-References

District Court reporter's salary and expenses, 3-5-602.

Cost of copies of proceedings, 3-5-604.

Fee for court reporter, 25-1-202.

Witness fees generally, Title 26, ch. 2, part 5.

10-1-407. Fees of civil officers — records. Fees for services of civil officers shall be the same as provided by law for services in civil courts. Records of all fees, costs, and disbursements shall be kept in the headquarters of the organization concerned.

History: En. 77-1907 by Sec. 49, Ch. 94, L. 1974; R.C.M. 1947, 77-1907.

Cross-References

Sheriff's fees for service of process and other papers, 7-32-2141.

10-1-408. Trial by civil authority — when authorized. In a case where the offense charged is also an offense against civil authority, the convening authority of a court-martial may, upon request of the civil authorities, order the person charged to be turned over to the appropriate civil authorities of this state for trial.

History: En. 77-1908 by Sec. 50, Ch. 94, L. 1974; R.C.M. 1947, 77-1908.

Cross-References

Sovereignty and jurisdiction of the state, Title 2, ch. 1, part 1.

Cession and retrocession of jurisdiction by state, Title 2, ch. 1, part 2.

State criminal jurisdiction, 46-2-101.

State sovereignty in space, 67-1-202.

Part 5

Compensation for Militia

10-1-501. Pay for activated militia from general fund. When the organized militia is ordered into active duty as provided for in Article VI, section 13, of the constitution of this state, warrants for pay and expenses shall be drawn upon the general fund of the state.

History: En. 77-2002 by Sec. 52, Ch. 94, L. 1974; R.C.M. 1947, 77-2002.

Cross-References

Emergency powers of Governor generally, Title 10, ch. 3.

10-1-502. Pay and allowances. (1) An officer ordered into active duty as provided for in Article VI, section 13, of the constitution of this state shall receive pay and allowances as prescribed for an officer of corresponding grade and length of service when on active duty in federal service.

(2) An enlisted member ordered into active duty as provided for in Article VI, section 13, of the constitution of this state shall receive pay at rates equivalent to twice those allowed for an enlisted member of corresponding grade and length of time when on active duty in federal service. This schedule

of pay for enlisted members applies only to the first 15 days of service. After 15 days, an enlisted member shall receive the pay and allowances as prescribed for an enlisted member of corresponding grade when on active duty in federal service.

(3) The pay and allowances provided for in this section may not be paid when pay and allowances for the active duty are provided out of federal funds.

History: En. 77-2003 by Sec. 53, Ch. 94, L. 1974; R.C.M. 1947, 77-2003.

Cross-References

Exemption from statewide classification and pay plans, 2-18-103.

Extension of terms of service, 10-1-303.

Pay, allowances, pensions, and benefits of the home guard, 10-1-704.

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10-1-503. Allowances for incidental expenses. Each commanding officer may receive an allowance for the incidental expenses of his command.

History: En. 77-2004 by Sec. 54, Ch. 94, L. 1974; R.C.M. 1947, 77-2004.

10-1-504. Repealed. Sec. 13, Ch. 430, L. 1983.

History: En. 77-2005 by Sec. 55, Ch. 94, L. 1974; R.C.M. 1947, 77-2005.

Part 6

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Servicemen to be given special consideration, Art. II, sec. 35, Mont. Const.

Militia members exempt from civil arrest, 46-6-102.

10-1-601. Actions against militia members — attorney's fees. When an action is commenced in a court against a member of the organized militia for an act done in his official capacity in the discharge of his duty or for an alleged omission to do an act which it was his duty to perform, the defendant shall be defended by the attorney general at the expense of this state, but private counsel may be employed by the defendant.

History: En. 77-2101 by Sec. 58, Ch. 94, L. 1974; R.C.M. 1947, 77-2101.

10-1-602. Right-of-way while performing military duty. (1) The commanding officer of a unit of the organized militia parading or performing any military duty in a street or highway may require all persons on the street or highway to yield the right-of-way to troops. Motor vehicles traveling in military convoy shall be accorded the right-of-way on all streets and highways.

(2) The exercise of the right-of-way provided for in this section may not interfere with the carriage of the United States mail or with the progress of an ambulance or members of a police or fire department.

(3) A person who fails to yield the right-of-way as prescribed by this section is guilty of a misdemeanor.

History: En. 77-2102 by Sec. 59, Ch. 94, L. 1974; amd. Sec. 10, Ch. 49, L. 1977; R.C.M. 1947, 77-2102.

Cross-References

Arrest of trespassers and disturbers, 10-1-612.

Place of imprisonment when none specified, 46-18-211.

Misdemeanor penalty when no penalty is specified, 46-18-212.

Police vehicles and authorized emergency vehicles, 61-8-107.

Flashing amber light on mail delivery vehicles, 61-9-229.

10-1-603. Depriving members of organized militia of employment. (1) A person may not willfully deprive a member of the organized militia of his employment or prevent his being employed or obstruct or annoy a member in respect to his trade, business, or employment because he is a member of the organized militia.

(2) A person may not dissuade any person from enlisting in the organized militia by threatening to injure or injuring his business, employment, or trade.

History: En. 77-2103 by Sec. 60, Ch. 94, L. 1974; R.C.M. 1947, 77-2103(1), (2).

Cross-References

Misdemeanor violation, 10-1-615.

10-1-604. Leave of absence of public employees attending training camp or similar training program. A state, city, town, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of 6 months shall be given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time.

History: En. 77-2104 by Sec. 61, Ch. 94, L. 1974; R.C.M. 1947, 77-2104; amd. Sec. 1, Ch. 80, L. 1991.

Cross-References

Officer not required to vacate civil office, 10-1-208.

Reemployment of veterans, 10-2-211.

Reemployment of public employee upon completion of service, 10-2-221.

10-1-605. Suspension of license fees for persons in military service. (1) The collection from any person in the military service of the United States, as defined by the Soldiers' and Sailors' Civil Relief Act of October 17, 1940, as amended October 6, 1942, of any license fee or privilege fee or charge or tax for and as a prerequisite for carrying on any personal service occupation or any profession, annually, or for any other period of time, whether falling due prior to or during his period of military service, shall not be made for the period or any part thereof during which such person was in military service and for an additional period of 6 months after the termination of his period of military service, if such person were not actually professing, carrying on, and practicing his profession, avocation, or occupation in the state of Montana during such period as herein extended; and such person or licensee shall not be liable for such license fee, privilege fee, tax, or personal service charge for any period during which said conditions obtain.

(2) The status, standing, and right of any such person or licensee under any of the laws of the state of Montana shall remain in the same force and effect in which said status, right, and standing existed at the time such person entered the military service of the United States, and for the whole period of such military service, and for an additional period of 6 months after the termination of said period of military service. At the end of said extended period said person shall be deemed to be and shall stand fully and completely restored to all the rights, privileges, of his profession, avocation, or occupation, to all intents and purposes as if he had not been absent in military service

and had been regularly carrying on his profession, avocation, and occupation and regularly paying all fees and charges due for the same. After the termination of said extended period, 6 months following termination of his military service, said person shall be subject for the next ensuing annual period or any part thereof and regularly thereafter to all license fees, privilege fees, charges, and taxes then lawfully collectible pursuant to law.

History: En. Sec. 1, Ch. 106, L. 1943; R.C.M. 1947, 84-5301.

Cross-References

Military pay exempt from state taxation, 15-30-116.

Professions and Occupations, Title 37.

10-1-606. Suspension of property taxes for persons in military service. (1) All taxes, whether on real or personal property, due on property owned by any citizen of the state of Montana in the active military or naval service of the United States shall be held in abeyance, no proceedings taken for the collection thereof, and no penalties or interests shall be added thereto until the expiration of the period of 1 year from and after the cessation of hostilities or discharge from military or naval service.

(2) To obtain the benefits of this section it shall be necessary for some person, on behalf of such person in the military or naval service, to file with the treasurer of the proper county an affidavit to the effect that the person against whom such taxes are charged is in such active military or naval service, which affidavit must be filed at or before the time when such taxes would become delinquent, and upon the filing thereof the treasurer shall make a notation upon his records to the effect that the collection of such taxes is suspended on account of the military or naval service of such taxpayer. But nothing in this section shall be so construed as to prevent such county treasurer from receiving payment of any such taxes whenever offered.

History: (1)En. Sec. 1, Ch. 14, Ex. L. 1918; re-en. Sec. 2236, R.C.M. 1921; re-en. Sec. 2236, R.C.M. 1935; Sec. 84-41-103, R.C.M. 1947; (2)En. Sec. 2, Ch. 14, Ex. L. 1918; re-en. Sec. 2237, R.C.M. 1921; re-en. Sec. 2237, R.C.M. 1935; Sec. 84-41-104, R.C.M. 1947; R.C.M. 1947, 84-41-103, 84-41-104.

Cross-References

Military pay exempt from state taxation, 15-30-116.

10-1-607 through 10-1-610 reserved.

10-1-611. Authority of commanding officer to arrest. The commanding officer at any drill, parade, encampment, or other duty may order those under his command to perform any military duty he requires. The commanding officer may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted man who disobeys the orders of his superior officer.

History: En. 77-2105 by Sec. 62, Ch. 94, L. 1974; R.C.M. 1947, 77-2105.

Cross-References

Militia members exempt from civil arrest, 46-6-102.

10-1-612. Arrest of trespassers and disturbers. (1) The commanding officer may arrest or authorize the arrest of a person who trespasses upon a camp or parade ground, armory, arsenal, rifle range, or any other place devoted to or used for military purposes.

(2) The commanding officer may arrest a person who:

(a) interrupts, molests, or disturbs the orderly discharge of duty by those under arms;

(b) disturbs or prevents the passage of troops going to or returning from any duty; or

(c) assaults a member of the uniformed militia while that member is performing any military duty.

(3) A person who is arrested under this section shall be transferred to the civil authorities in the county where the offense was committed.

(4) A person committing an offense for which an arrest may be made pursuant to this section is guilty of a misdemeanor.

History: En. 77-2106 by Sec. 63, Ch. 94, L. 1974; amd. Sec. 11, Ch. 49, L. 1977; R.C.M. 1947, 77-2106.

Cross-References

Right-of-way while performing military duty, 10-1-602.

Definition of assault, 45-5-201.

Place of imprisonment when none specified, 46-18-211.

Penalty when none specified, 46-18-212.

10-1-613. Unlawful sale or detention of military property. A person may not conceal, sell, dispose of, offer for sale, purchase, retain after demand made by an officer, or in any manner pledge or pawn any arms, equipment, or other military property issued by the United States or this state for use of the militia.

History: En. 77-2107 by Sec. 64, Ch. 94, L. 1974; R.C.M. 1947, 77-2107(part).

Cross-References

Property remains public property, 10-1-107.

Unlawful sale as misdemeanor, 10-1-615.

Damage or destruction of public property unlawful, 45-6-101.

Definition of theft, 45-6-301.

10-1-614. Unlawful wearing of uniform. A person who is not a member of the organized militia may not wear the uniform or insignia issued or authorized for use by the organized militia.

History: En. 77-2108 by Sec. 65, Ch. 94, L. 1974; R.C.M. 1947, 77-2108(part).

10-1-615. Misdemeanor violations. A person who violates 10-1-603, 10-1-613, or 10-1-614 is guilty of a misdemeanor.

History: Ap. p. Sec. 60, Ch. 94, L. 1974; Sec. 77-2103, R.C.M. 1947; Ap. p. Sec. 64, Ch. 94, L. 1974; Sec. 77-2107, R.C.M. 1947; Ap. p. Sec. 65, Ch. 94, L. 1974; Sec. 77-2108, R.C.M. 1947; R.C.M. 1947, 77-2103(3), 77-2107(part), 77-2108(part).

Cross-References

Place of imprisonment when none is specified, 46-18-211.

Misdemeanor penalty when no penalty is specified, 46-18-212.

Part 7

Home Guard

10-1-701. Home guard — organization and composition. The home guard may be organized, maintained, and disbanded at the discretion of the governor, in accordance with federal law and regulation, when additional defense forces are needed in this state. The home guard shall be composed of officers assigned to it and any able-bodied citizen of this state who volunteers to serve in it. If additional persons are needed in the home guard, members of the unorganized militia shall serve if enrolled by draft or otherwise as provided by law and regulation.

History: En. 77-2201 by Sec. 66, Ch. 94, L. 1974; R.C.M. 1947, 77-2201.

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.

Classes of militia, 10-1-103.

Rules by Governor, 10-1-105.

10-1-702. Gubernatorial rules for guard. The home guard shall be organized, armed, equipped, maintained, disciplined, governed, administered, and trained under rules prescribed by the governor. These rules shall conform to federal law and regulations.

History: En. 77-2202 by Sec. 67, Ch. 94, L. 1974; R.C.M. 1947, 77-2202.

Cross-References

Federal regulations to govern, 10-1-104.

Rules by Governor, 10-1-105.

10-1-703. Use of armories and equipment. The governor may make available to the home guard the facilities of state armories and their equipment and any other state land and property as may be available. The governor may requisition from the federal government, for the use of the home guard, arms, ammunition, clothing, equipment, and other items in accordance with federal law and regulations. The governing body of a county, municipality, or school district may make available to the home guard any premises, facilities, equipment, or other property belonging to or under the control of the county, municipality, or school district.

History: En. 77-2203 by Sec. 68, Ch. 94, L. 1974; R.C.M. 1947, 77-2203.

Cross-References

Armories, 10-1-108.

Lease of real property for military facilities, 10-1-109.

10-1-704. Pay and allowances. An officer or member of the home guard on active duty in the service of this state shall receive the same pay and allowances as prescribed for officers and enlisted members of the militia under 10-1-502.

History: En. 77-2204 by Sec. 69, Ch. 94, L. 1974; R.C.M. 1947, 77-2204; amd. Sec. 3, Ch. 430, L. 1983.

Part 8

National Guard Reenlistment or Extension Incentive

10-1-801. Short title. This part may be cited as the "Montana National Guard Reenlistment or Extension Act of 1981".

History: En. Sec. 1, Ch. 506, L. 1981.

10-1-802. Purpose. This part is intended to encourage a greater number of extensions and reenlistments in the Montana national guard, which is the state's only source of organized manpower in times of emergency.

History: En. Sec. 2, Ch. 506, L. 1981.

10-1-803. Definitions. As used in this part, the following definitions apply:

(1) "Bonus" means the extension or reenlistment incentive bonus provided by this part.

(2) "Extension" means the continuation of active national guard service with the Montana national guard.

(3) "Member" means any enlisted member of the Montana army or air national guard.

(4) "Reenlistment" means a second or subsequent voluntary enrollment in the Montana national guard.

(5) "Secretary" means a designee of the department of military affairs.

History: En. Sec. 3, Ch. 506, L. 1981.

10-1-804. Bonus. A member is entitled to receive a bonus payment for each year of service for which he extends or reenlists. The bonus shall be paid to each eligible member within 60 days following the successful completion of a year of service for which he extended or reenlisted. The secretary shall set the amount of the bonus based on the appropriation for that purpose.

History: En. Sec. 4, Ch. 506, L. 1981.

10-1-805. Eligibility. The bonus must be granted to a person who:

(1) extends his original enlistment or reenlists in the Montana national guard;

(2) holds a rank commensurate with a unit vacancy in accordance with the national guard bureau's policy;

(3) does not have 20 years of total service;

(4) is not a civil service employee in a full-time capacity with the national guard, including but not limited to active duty for training or full-time training duty;

(5) is not eligible for any federally funded national guard bonus for the reenlistment or extension covered by this part; and

(6) attends 90% of the scheduled drills and annual training in the year for which the benefit is to be paid.

History: En. Sec. 5, Ch. 506, L. 1981.

10-1-806. Administration. (1) The secretary shall administer this part. He shall maintain records and make rules necessary for its administration.

(2) He shall determine the eligibility of members to receive the bonus and disburse a bonus payment upon a determination of eligibility.

History: En. Sec. 6, Ch. 506, L. 1981.

Cross-References

Notice and opportunity to be heard — exceptions, 2-3-102.

Montana Administrative Procedure Act — definitions, 2-4-102.

CHAPTER 2

VETERANS

Part 1 — Board of Veterans' Affairs

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10-2-103. Seal — acknowledgments — officers.
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10-2-212. Private employer's duty.
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Part 3 — Veterans' Benefits

10-2-301. Renumbered 61-3-451 by Code Commissioner, 1985.
10-2-302. Renumbered 61-3-452 by Code Commissioner, 1985.
10-2-303. Renumbered 61-3-453 by Code Commissioner, 1985.
10-2-304. Renumbered 61-3-455 by Code Commissioner, 1985.
10-2-305 through 10-2-310 reserved.
10-2-311 through 10-2-314. Repealed.

Part 4 — Montana Veterans' Home

10-2-401. Location and function of homes — persons admitted.
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10-2-403. Eligibility for residence in home.
10-2-404. Acceptance and deposit of federal money.
10-2-405 through 10-2-410 reserved.
10-2-411. Repealed.
10-2-412. Repealed.
10-2-413. Repealed.
10-2-414. Repealed.
10-2-415. Repealed.
10-2-416. Pledge to continue operation and maintenance.
10-2-417. Use of funds generated by taxation on cigarettes.

Part 5 — Veterans' Burial

10-2-501. Burial allowance for military.
10-2-502. County of residence to pay expense.
10-2-503. Report of actions and expenses by burial supervisor.
10-2-504. Duty of clerk.
10-2-505. No compensation for burial supervisor.
10-2-506. Not to apply to nonresidents.

Part 6 — State Veterans' Cemetery

10-2-601. State veterans' cemetery.
10-2-602. Rulemaking authority.
10-2-603. Special revenue account — use of funds — solicitation.

Chapter Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

Taxes, property exemption, 15-6-211.

"Agent orange" payments — income tax exemption, 15-30-111.

Teachers' retirement system — service credits, 19-20-404.

Raffles — nonprofit groups exempt from permit or investigative fees, 23-5-413.

Benefits not exempt from execution when debt is for child support, 25-13-608.

Veterans' public employment preference, Title 39, ch. 29.

Parking privilege for disabled veteran, 49-4-302.

Special parking and vehicle licensing privileges, Title 61, ch. 3, parts 4 and 5.

Special fishing permits, 87-2-802.
Housing developments, 90-6-104.

Part 1
Board of Veterans' Affairs

Part Cross-References
Board of Veterans' Affairs created, 2-15-1205.

10-2-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterans' affairs provided for in 2-15-1205.

(2) "Veteran" means an honorably discharged individual who served on active duty, other than for training, with the United States armed forces, including an individual who served with the United States coast guard. The term includes individuals who served with the first special service force and the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

History: En. Sec. 36, Ch. 121, L. 1974; R.C.M. 1947, 71-2201; amd. Sec. 3, Ch. 271, L. 1983; amd. Sec. 1, Ch. 609, L. 1989; amd. Sec. 1, Ch. 70, L. 1991.

10-2-102. Duty of board — employee qualifications. (1) The board shall establish a statewide service for discharged veterans and their families, actively cooperate with state and federal agencies having to do with the affairs of veterans and their families, and promote the general welfare of all veterans and their families.

(2) Employees of the board must be residents of this state. Whenever possible all employees of the board shall have served in the military forces of the United States during World War I, World War II, or the Korean or the Vietnam conflicts and shall have been honorably discharged therefrom. Preference for employment shall be given to disabled veterans.

History: En. Sec. 2, Ch. 111, L. 1945; amd. Sec. 1, Ch. 92, L. 1971; Sec. 77-1002, R.C.M. 1947; amd. and redes. by Sec. 37, Ch. 121, L. 1974; amd. Sec. 39, Ch. 535, L. 1975; R.C.M. 1947, 71-2202.

Cross-References
Rules for determining residence, 1-1-215.
Veterans' public employment preference, Title 39, ch. 29.
Handicapped persons' public employment preference, Title 39, ch. 30.

10-2-103. Seal — acknowledgments — officers. (1) The board may provide for a seal.

(2) The members and employees of the board may take acknowledgments, depositions, and administer oaths and affirmations in any matters connected with the affairs of the board or with the official duties of the members or employees of the board.

(3) The board shall select from its membership a chairman, a vice-chairman, and a secretary.

History: En. Sec. 5, Ch. 111, L. 1945; Sec. 77-1005, R.C.M. 1947; amd. and redes. by Sec. 38, Ch. 121, L. 1974; R.C.M. 1947, 71-2203.

10-2-104. Aid by state, county, and municipal officers. All state, county, and municipal officers shall render such aid to the board as shall be within their power and consistent with the duties of their respective offices.

History: En. Sec. 6, Ch. 111, L. 1945; Sec. 77-1006, R.C.M. 1947; amd. and redes. by Sec. 39, Ch. 121, L. 1974; R.C.M. 1947, 71-2204.

10-2-105. Extra compensation for service forbidden. A member or employee of the board may not accept, receive, or charge any money or thing of value for the performance of any service rendered to any veteran or his or her dependents, at any time or in any manner, other than the compensation allowed by law. A person who violates this section is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 111, L. 1945; Sec. 77-1007, R.C.M. 1947; amd. and redes. by Sec. 40, Ch. 121, L. 1974; R.C.M. 1947, 71-2205.

Cross-References

Misdemeanor penalty when no penalty is specified, 46-18-212.

10-2-106. Acceptance of federal funds. The board may accept from the federal government or any agencies thereof any funds made available to carry out purposes within the scope of the activities and purposes of the board and accept such funds as the board directs.

History: En. Sec. 1, Ch. 256, L. 1947; Sec. 77-1009, R.C.M. 1947; amd. and redes. by Sec. 41, Ch. 121, L. 1974; R.C.M. 1947, 71-2206.

10-2-107. Contracts for federal reimbursement funds. The governor of this state and the chairman and secretary of the board may sign contracts with the federal government or any agency thereof for the reimbursement of the board for any work which the board may do for which any federal statute provides reimbursement to the states.

History: En. Sec. 2, Ch. 256, L. 1947; Sec. 77-1010, R.C.M. 1947; amd. and redes. by Sec. 42, Ch. 121, L. 1974; R.C.M. 1947, 71-2207.

Part 2

Reemployment on Completion of Service

Part Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

Veterans' preference in public employment, Title 39, ch. 29.

Veterans' preference — exception from prohibitions, 49-2-405, 49-3-103.

10-2-201 through 10-2-206. Repealed. Sec. 14, Ch. 1, Sp. L. 1983.

Compiler's Comments

Histories of Repealed Sections:

10-2-201. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(1).

10-2-202. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(2); amd. Sec. 1, Ch. 142, L. 1979; amd. Sec. 1, Ch. 5, L. 1981.

10-2-203. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(3).

10-2-204. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(4).

10-2-205. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(5).

10-2-206. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(6).

10-2-207 through 10-2-210 reserved.

10-2-211. Reemployment of veterans upon completion of service. (1) Any person inducted into the armed forces of the United States as a result of the operation of any selective training and service act or national guard and reserve officers mobilization act since 1948 who has satisfactorily completed his period of training or service as attested by a certificate to that effect shall be reemployed in the position he left in order to perform such training or service if:

(a) he is still qualified to perform the duties of the position;

(b) the position he formerly held was not a temporary one; and

(c) he makes application for reemployment within 40 days after he is retired from training or service.

(2) Should any person qualified for reemployment be a schoolteacher or instructor, the board of trustees or other employing agency of the school involved is not obligated to rehire the person until the beginning of the semester or quarter following the one in which the application for reemployment was made.

History: En. Sec. 1, Ch. 150, L. 1941; amd. Sec. 1, Ch. 209, L. 1951; R.C.M. 1947, 77-601; amd. Sec. 2, Ch. 142, L. 1979.

Cross-References

Officer not required to vacate civil office, 10-1-208.

Leave of absence for public employees attending training camp, 10-1-604.

Restoration of benefits, 10-2-213.

Enforcement procedure, 10-2-214.

10-2-212. Private employer's duty. If such person was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. Sec. 2, Ch. 150, L. 1941; R.C.M. 1947, 77-602.

Cross-References

Restoration of benefits, 10-2-213.

10-2-213. Restoration of benefits. Any person who is restored to a position in accordance with 10-2-211 or 10-2-212 shall be considered as having been on leave of absence during the period of training or service in the armed forces of the United States and at the expiration of the period shall be entitled to be restored to his employment without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer in accordance with established rules and practices relating to employees on leave of absence, and shall not be discharged from the position without cause within 1 year after restoration.

History: En. Sec. 3, Ch. 150, L. 1941; R.C.M. 1947, 77-603; amd. Sec. 3, Ch. 142, L. 1979.

10-2-214. Enforcement procedure. In case any private employer refuses to reemploy any person entitled to reemployment under the provisions of 10-2-211 through 10-2-214, the district court of the judicial district in which such private employer maintains his place of business has power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to such benefits, to specifically require such employer to comply with 10-2-211 through 10-2-214, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by such employer's unlawful action. Upon application to the county attorney of the county in which such private employer maintains a place of business by any person claiming to be entitled to redress under 10-2-211 through 10-2-214, the county attorney shall appear and act as attorney for such person in the amicable settlement of the claim or in the filing of any motion, petition, or other appropriate pleading to specifically require such employer to comply with such provisions. No fees or court costs may be taxed against the person applying for such benefits.

History: En. Sec. 4, Ch. 150, L. 1941; amd. Sec. 5, Ch. 49, L. 1977; R.C.M. 1947, 77-604.

10-2-215 through 10-2-220 reserved.

10-2-221. Reemployment of public employee upon completion of service. Any person inducted into the armed forces of the United States or any member of any reserve component of the armed forces or national guard or any retired personnel ordered into the active military service of the United States who, in order to perform such training, service, or active duty, leaves a position, other than a temporary position, in the employ of the state or any political subdivision thereof and who receives a certificate of completion of training or service from the proper authorities of the United States government and is still qualified to perform the duties of such position shall be restored to:

(1) the position or to a position of like seniority, status, and pay if the position was in the employ of the state or any political subdivision thereof, excluding elective positions, and the position or department has not been abolished or consolidated; or

(2) the position, status, and pay at any time during the term for which he was elected if the position was that of an elected, executive, or judicial officer of the state or any political subdivision thereof.

History: En. Sec. 1, Ch. 47, L. 1941; R.C.M. 1947, 77-701; amd. Sec. 4, Ch. 142, L. 1979.

Cross-References

Officer not required to vacate civil office, 10-1-208.

Depriving members of organized militia of employment, 10-1-603.

Leave of absence for public employee during training, 10-1-604.

Reemployment of veterans, 10-2-211.

Enforcement, 10-2-226.

Appointment of acting public officer, 10-2-227.

Absence for military duty not to create vacancy in office, 10-2-228.

10-2-222. Application for reemployment. A person asking restoration to a position in accordance with the provisions of 10-2-221(1) shall, in order to qualify for the restoration of such position, make application for reemployment within 40 days after he is relieved from such training and service. Such application must be in writing and presented to the officer, district, board, or employing unit of the state or political subdivision thereof by which such applicant was formerly employed.

History: **En. Sec. 2, Ch. 47, L. 1941; R.C.M. 1947, 77-702.**

Cross-References

Enforcement, 10-2-226.

10-2-223. Application for reinstatement of officer. A person seeking restoration to an elective office in accordance with the provisions of 10-2-221(2) shall, in order to qualify under the provisions of that section, make application for reinstatement to such office within 40 days after he is relieved from such training and service. Such applications must be in writing and presented to the governor in the case of state elective offices and to the board of county commissioners in the case of county, township, or district offices.

History: **En. Sec. 3, Ch. 47, L. 1941; R.C.M. 1947, 77-703.**

10-2-224. Reinstatement for remainder of term. Any person who is restored to a position in accordance with the provisions of 10-2-221(2) shall be considered as having been on leave of absence during his period of active military service and shall be immediately so restored to his official position as such officer for the balance of the term for which he was elected.

History: **En. Sec. 5, Ch. 47, L. 1941; R.C.M. 1947, 77-705.**

10-2-225. No loss of seniority or benefits. Any person who is restored to a position in accordance with the provisions of 10-2-221(1) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority (if seniority rules are applicable in such particular position), shall be entitled to participate in any insurance or other benefits offered by the state of Montana or the political subdivision thereof pursuant to established rules and practices relating to employees on furlough or on leave of absence in effect at the time such person is ordered into such service and, except as otherwise provided herein, shall not be discharged from such position without cause within 1 year after such restoration.

History: **En. Sec. 4, Ch. 47, L. 1941; R.C.M. 1947, 77-704.**

10-2-226. Enforcement. In case of any failure or refusal by any officer, board, department, or employing unit of the state or any political subdivision thereof to comply with the provisions of 10-2-221, 10-2-224, or 10-2-225, the district court of the state of Montana for the county in which such person seeking restoration of position resides shall have the power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of these provisions, to specifically require such officer, department, board, or employing unit to comply with such provision for any loss of wages or benefits suffered by reason of such an unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. Upon application to the county attorney of the county in which the applicant resides in the case of county, township, and district offices and positions and to the attorney general of the state of Montana in the case of state offices and positions, by any person claiming to be entitled to the benefits of such provisions, such county attorney or attorney general, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and prosecution thereof to specifically require a compliance with such provisions; provided that no fees or court costs shall be taxed against the person so applying for such benefits.

History: **En. Sec. 6, Ch. 47, L. 1941; R.C.M. 1947, 77-706.**

10-2-227. Acting officer — how appointed. The governor, in the case of district judges and officers elected from the state at large, and the board of county commissioners, in the case of members of either house of the legislature and county, township, or district officers elected from such county, shall appoint an "acting" officer to temporarily replace any elected officer, designated in 10-2-221(2), who enters military service in the manner set forth in 10-2-221. "Acting" officers so appointed shall be appointed for a period not to exceed the unexpired term of the officer whose duties he assumes, and such appointment shall be subject to the right of the elected officer to the restoration of his position.

History: **En. Sec. 7, Ch. 47, L. 1941; amd. Sec. 6, Ch. 49, L. 1977; R.C.M. 1947, 77-707.**

10-2-228. Absence for military service creates no vacancy in office. It is specifically provided that the provisions of 2-16-112, subsections (5), (6), and (7) of 2-16-501, and 7-4-2208, shall not be, and the same are declared not to be, applicable insofar as they relate to absence or residence of any officer of the state or political subdivision thereof caused by the military service of such officer as set forth in 10-2-221. It is specifically declared that the absence of such officer caused by such military service shall not create a vacancy in the office to which he was elected.

History: **En. Sec. 8, Ch. 47, L. 1941; R.C.M. 1947, 77-708.**

Cross-References

Officer not required to vacate civil office, 10-1-208.

Leave of absence of public employee attending training, 10-1-604.

Part 3
Veterans' Benefits

Part Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

10-2-301. Renumbered 61-3-451 by Code Commissioner, 1985. Sec. 7, Ch. 159, L. 1985.

10-2-302. Renumbered 61-3-452 by Code Commissioner, 1985. Sec. 7, Ch. 159, L. 1985.

10-2-303. Renumbered 61-3-453 by Code Commissioner, 1985. Sec. 7, Ch. 159, L. 1985.

10-2-304. Renumbered 61-3-455 by Code Commissioner, 1985. Sec. 7, Ch. 159, L. 1985.

10-2-305 through 10-2-310 reserved.

10-2-311 through 10-2-314. Repealed. Sec. 3, Ch. 170, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

10-2-311. En. Sec. 1, Ch. 194, L. 1943; amd. Sec. 1, Ch. 44, L. 1945; Sec. 77-901, R.C.M. 1947; amd. and redes. 75-8611 by Sec. 4, Ch. 94, L. 1974; R.C.M. 1947, 75-8611.

10-2-312. En. Sec. 1, Ch. 141, L. 1957; amd. Sec. 1, Ch. 150, L. 1965; amd. Sec. 1, Ch. 225, L. 1969; amd. Sec. 1, Ch. 64, L. 1974; Sec. 77-909, R.C.M. 1947; amd. and redes. 75-8612 by Sec. 5, Ch. 94, L. 1974; amd. Sec. 3, Ch. 49, L. 1977; R.C.M. 1947, 75-8612; amd. Sec. 5, Ch. 142, L. 1979.

10-2-313. En. Sec. 2, Ch. 141, L. 1957; Sec. 77-910, R.C.M. 1947; amd. and redes. 75-8613 by Sec. 6, Ch. 94, L. 1974; R.C.M. 1947, 75-8613.

10-2-314. En. Sec. 3, Ch. 141, L. 1957; Sec. 77-911, R.C.M. 1947; amd. and redes. 75-8614 by Sec. 7, Ch. 94, L. 1974; R.C.M. 1947, 75-8614.

Part 4
Montana Veterans' Home

Part Cross-References

Constitutional authority for establishment, Art. XII, sec. 3, Mont. Const.

General administration of institutions, Title 53, ch. 1.

Established within Department of Corrections and Human Services, 53-1-202.

Residents subject to per diem and ancillary charges, 53-1-402.

10-2-401. Location and function of homes — persons admitted. The institutions at Columbia Falls and in eastern Montana are the Montana veterans' homes, and their primary function is to provide a home and subsistence for veterans. The department of corrections and human services may also admit spouses or surviving spouses of veterans to the homes if space allows.

History: En. Sec. 20, Ch. 199, L. 1965; amd. Sec. 40, Ch. 535, L. 1975; R.C.M. 1947, 80-1801; amd. Sec. 2, Ch. 609, L. 1989; amd. Sec. 11, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

10-2-402. Superintendent to be given veterans' preference. In the selection of the superintendent of each of the Montana veterans' homes, the department of corrections and human services shall apply the preference granted to veterans and disabled veterans under 39-29-102, but not the preference granted to other persons under 39-29-102 or Title 39, chapter 30.

History: En. Sec. 21, Ch. 199, L. 1965; R.C.M. 1947, 80-1802; amd. Sec. 1, Ch. 119, L. 1981; amd. Sec. 11, Ch. 1, Sp. L. 1983; amd. Sec. 7, Ch. 646, L. 1989; amd. Sec. 12, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

10-2-403. Eligibility for residence in home. To be eligible for residence in a Montana veterans' home under rules prescribed by the department of corrections and human services, a person must be a veteran or the spouse or surviving spouse of a veteran. Consideration must also be given to:

(1) the person's age;

(2) the person's physical and mental status;

(3) the person's ability or inability to locate suitable alternative accommodations;

(4) the person's term of residence in Montana;

(5) the person's gender as it relates to availability of appropriate living space;

(6) the ability of the Montana veterans' home to meet the person's needs; and

(7) other admission requirements established by the department.

History: En. Sec. 22, Ch. 199, L. 1965; amd. Sec. 41, Ch. 535, L. 1975; R.C.M. 1947, 80-1803; amd. Sec. 1, Ch. 469, L. 1983; amd. Sec. 3, Ch. 609, L. 1989; amd. Sec. 13, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

Cross-References

Rules for determining residence, 1-1-215.

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-2-404. Acceptance and deposit of federal money. The department of corrections and human services may accept money from the federal government that becomes available to the state as a result of operating the Montana veterans' homes and shall deposit such money in the state treasury for the benefit of the homes. If a resident of a home is transferred to another institution, as defined in 53-1-101, the department of corrections and human services shall continue to draw from the federal government any money available for the maintenance of the former resident.

History: En. Sec. 23, Ch. 199, L. 1965; R.C.M. 1947, 80-1804; amd. Sec. 14, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

Cross-References

Federal revenues and endowments, Title 17, ch. 3, part 1.

10-2-405 through 10-2-410 reserved.

10-2-411. Repealed. Sec. 85, Ch. 10, L. 1993.

History: En. Sec. 1, Ch. 683, L. 1989.

10-2-412. Repealed. Sec. 19, Ch. 579, L. 1993.

History: En. Sec. 2, Ch. 683, L. 1989; amd. Sec. 17, Ch. 10, L. 1993.

10-2-413. Repealed. Sec. 85, Ch. 10, L. 1993, and Sec. 19, Ch. 579, L. 1993.

History: En. Sec. 3, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

10-2-414. Repealed. Sec. 85, Ch. 10, L. 1993.

History: En. Sec. 4, Ch. 683, L. 1989.

10-2-415. Repealed. Sec. 85, Ch. 10, L. 1993.

History: En. Sec. 9, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

10-2-416. Pledge to continue operation and maintenance. Pursuant to 38 U.S.C. 641 and 5035(a)(6), the state shall appropriate funds either from the general fund or from funds generated under 16-11-111 to the department of corrections and human services financial support necessary to provide for continued operation and maintenance of the state home for veterans in eastern Montana. The department of corrections and human services may contract with a private vendor to provide for the operation of the eastern Montana veterans' home and may charge the contract vendor a rental fee for the maintenance and upkeep of the facility.

History: En. Sec. 10, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 18, Ch. 10, L. 1993; amd. Sec. 2, Ch. 579, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 10 at end of first sentence substituted "state home for veterans in eastern Montana" for "project upon completion".

Chapter 579 in first sentence, before "from the general fund", inserted "funds either" and after "from the general fund" inserted "or from funds generated under 16-11-111"; and inserted second sentence relating to private vendor contracts for operation of the Eastern Montana Veterans' Home. Amendment effective April 28, 1993.

10-2-417. Use of funds generated by taxation on cigarettes. (1) Revenue generated by 16-11-119 and allocated to the department of corrections and human services must be used to support the operation and maintenance of the Montana veterans' homes programs.

(2) The legislature shall appropriate from the account established in 16-11-119 the funds required for the operation and maintenance of the Montana veterans' homes.

History: En. Sec. 2, Ch. 548, L. 1993.

Compiler's Comments

Effective Date: Section 5, Ch. 548, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 5

Veterans' Burial

Part Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

10-2-501. Burial allowance for military. (1) The board of commissioners of each county in this state shall designate a person in the county, preferably a veteran, as veterans' burial supervisor.

(2) The veterans' burial supervisor shall cause to be decently interred the body of any veteran who was a resident of the state of Montana at the time of death. In performing this duty, the veterans' burial supervisor shall ensure that the desires of the veteran's personal representative or heirs are not violated.

(3) The burial may not be made in any burial grounds or cemetery or in any portion of any burial grounds or cemetery used exclusively for the burial of pauper dead.

(4) A sum not to exceed $250 to defer burial expenses must be paid by the county commissioners of the county in which the veteran was a bona fide resident at the time of death.

(5) The burial benefits are not available in the case of any veteran whose personal representative or heirs waive the benefits.

(6) Whenever burial is of a resident of the Montana veterans' home, a sum not to exceed $250 to defer burial expenses must be paid by the county commissioners of the county in which the veteran resided prior to admittance to the Montana veterans' home.

(7) If a veteran dies while temporarily absent from the state or county of residence, the provisions of this section apply and the burial expenses not exceeding the amount specified in this section must be paid in the same manner as provided in this section.

(8) Whenever a veteran dies at any public institution of the state of Montana, other than the Montana veterans' home, and burial for any cause is not made in the county of the former residence of the veteran, the officers of the state institution shall provide the proper burial prescribed in this section. The reimbursement for the expense of each burial may not exceed $250. The expense must be paid by the county in which the veteran resided at the time of entry into the institution.

(9) A burial may not be covered by any special or standing contract whereby the cost of burial is reduced below the maximum amount fixed in this section, to the disparagement of proper interment.

(10) The veterans' burial supervisor shall, upon request of the deceased veteran's next of kin or guardian, assist in applying to the proper authority for a suitable headstone, as provided by act of congress, and in placing the headstone on the veteran's grave. A sum not exceeding $30 for the shipping and raising of the headstone must be paid by the county commissioners of the county in which the veteran was a resident at the time of death. The expense must be audited and paid as provided in this section for burial expenses.

History: En. Sec. 1, Ch. 39, L. 1903; re-en. Sec. 2065, Rev. C. 1907; amd. Sec. 1, Ch. 89, L. 1909; amd. Sec. 1, Ch. 109, L. 1911; amd. Sec. 1, Ch. 178, L. 1919; amd. Sec. 1, Ch. 194, L. 1921; re-en. Sec. 4536, R.C.M. 1921; amd. Sec. 1, Ch. 181, L. 1931; re-en. Sec. 4536, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1937; amd. Sec. 1, Ch. 52, L. 1939; amd. Sec. 1, Ch. 25, L. 1945; amd. Sec. 1, Ch. 310, L. 1967; amd. Sec. 1, Ch. 96, L. 1969; amd. Sec. 34, Ch. 535, L. 1975; amd. Sec. 2, Ch. 49, L. 1977; R.C.M. 1947, 71-120; amd. Sec. 4, Ch. 609, L. 1989; amd. Sec. 2, Ch. 70, L. 1991.

Cross-References

Cemetery services, Title 7, ch. 35.

10-2-502. County of residence to pay expense. The expenses of such burial shall be paid by the county in which the veteran dies or, if death occurs while in service, the county of his last residency. But if the veteran has a residence in another county in this state than the one paying the expenses, the county of his residence shall refund the money advanced by the county where he died. The claimant shall be a relative or guardian unless otherwise directed. Expenses of such funeral shall be audited and paid as other expenses are audited and paid by the county.

History: En. Sec. 2, Ch. 39, L. 1903; re-en. Sec. 2066, Rev. C. 1907; re-en. Sec. 4537, R.C.M. 1921; re-en. Sec. 4537, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1967; R.C.M. 1947, 71-121; amd. Sec. 7, Ch. 609, L. 1989.

10-2-503. Report of actions and expenses by burial supervisor. It is the duty of the person appointed as provided in 10-2-501 to cause the veteran to be buried as provided in this part, and he shall immediately report his action to the clerk of the board of county commissioners, setting forth all the facts, together with the veteran's name and rank, the last command to which the veteran belonged, so far as is known, the date of death, the exact place of burial, and an itemized statement of the expenses incurred by reason of the burial. The board of county commissioners may direct that additional information be kept in the book required to be kept by the clerk of the board of county commissioners by 10-2-504.

History: En. Sec. 3, Ch. 39, L. 1903; re-en. Sec. 2067, Rev. C. 1907; amd. Sec. 1, Ch. 109, L. 1911; re-en. Sec. 4538, R.C.M. 1921; re-en. Sec. 4538, R.C.M. 1935; amd. Sec. 3, Ch. 310, L. 1967; R.C.M. 1947, 71-122; amd. Sec. 7, Ch. 609, L. 1989; amd. Sec. 3, Ch. 70, L. 1991.

10-2-504. Duty of clerk. It is the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses, to transcribe in a book to be kept for that purpose all the facts contained in the report concerning the veteran.

History: En. Sec. 4, Ch. 39, L. 1903; re-en. Sec. 2068, Rev. C. 1907; re-en. Sec. 4539, R.C.M. 1921; re-en. Sec. 4539, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1963; amd. Sec. 4, Ch. 310, L. 1967; R.C.M. 1947, 71-123; amd. Sec. 1, Ch. 442, L. 1979; amd. Sec. 7, Ch. 609, L. 1989; amd. Sec. 4, Ch. 70, L. 1991.

10-2-505. No compensation for burial supervisor. The person appointed as provided in 10-2-501 shall not receive any compensation for any duties he may perform in compliance with this part.

History: En. Sec. 5, Ch. 39, L. 1903; re-en. Sec. 2069, Rev. C. 1907; re-en. Sec. 4540, R.C.M. 1921; re-en. Sec. 4540, R.C.M. 1935; R.C.M. 1947, 71-124.

10-2-506. Not to apply to nonresidents. This part shall not apply to veterans who, at the time of their death, shall not have a legal residence within this state.

History: En. Sec. 6, Ch. 39, L. 1903; re-en. Sec. 2070, Rev. C. 1907; re-en. Sec. 4541, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1931; re-en. Sec. 4541, R.C.M. 1935; amd. Sec. 5, Ch. 310, L. 1967; R.C.M. 1947, 71-125; amd. Sec. 7, Ch. 609, L. 1989.

Cross-References

Rules for determining residence, 1-1-215.

Part 6

State Veterans' Cemetery

10-2-601. State veterans' cemetery. The department of military affairs shall establish a state veterans' cemetery. The cemetery must be located at Fort William Henry Harrison, Lewis and Clark County, Montana.

History: En. Sec. 1, Ch. 734, L. 1985.

Cross-References

Jurisdiction over Veterans Administration center, 2-1-212.

10-2-602. Rulemaking authority. The department of military affairs shall adopt rules that provide criteria for determining which veterans may be buried in the state veterans' cemetery. The criteria must include, but are not limited to, discharge status and length of service.

History: En. Sec. 2, Ch. 734, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-2-603. Special revenue account — use of funds — solicitation. (1) There is an account in the special revenue fund to the credit of the department of military affairs for the state veterans' cemetery.

(2) Plot allowances, donations, and, as provided in 61-3-332, revenue from veterans' license plate sales must be deposited into the account.

(3) As appropriated by the legislature, money in the account may be used only for the construction, maintenance, operation, and administration of the state veterans' cemetery.

(4) The department of military affairs may solicit veterans' license plate sales and donations on behalf of the state veterans' cemetery.

History: En. Sec. 1, Ch. 159, L. 1993.

Compiler's Comments

Effective Date: Section 4, Ch. 159, L. 1993, provided: "[This act] is effective July 1, 1993."

CHAPTER 3

DISASTER AND EMERGENCY SERVICES

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Chapter Cross-References

Department of Military Affairs created, 2-15-1201.

Division of Disaster and Emergency Services created, 2-15-1204.

Closure of banks during emergency, 32-1-561, et seq.

Nuclear facilities — evacuation and emergency medical aid plans, 75-20-1204.

Noxious weed emergency, Title 80, ch. 7, part 8.

Energy emergency laws to supplement civil defense laws, 90-4-317.

Western Interstate Nuclear Compact, Title 90, ch. 5, part 2.

Part 1

General Provisions and Administration

10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to insure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made disasters;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and

(10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in either state or federal emergency or disaster declarations.

History: En. Sec. 2, Ch. 218, L. 1951; amd. Sec. 1, Ch. 220, L. 1953; Sec. 77-1302, R.C.M. 1947; amd. and redes. 77-2301 by Sec. 8, Ch. 94, L. 1974; amd. Sec. 2, Ch. 335, L. 1977; R.C.M. 1947, 77-2301; amd. Sec. 1, Ch. 71, L. 1987; amd. Sec. 1, Ch. 595, L. 1989.

Cross-References

Legislative findings and intent concerning energy emergency, 90-4-301.

10-3-102. Limitations. Nothing in parts 1 through 4 of this chapter may be construed to give any state, local, or interjurisdictional agency or public official authority to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by parts 1 through 4 of this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs; but any communications facility or organization (including but not limited to radio and television stations, wire services, and newspapers) may be required to

transmit or print public service messages furnishing information or instructions in connection with an emergency or disaster;

(3) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but state, local, and interjurisdictional disaster and emergency plans shall place reliance upon the forces available for performance of functions related to emergencies and disasters; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution, statutes, or common law of this state independent of or in conjunction with any provisions of parts 1 through 4 of this chapter.

History: En. 77-2301.2 by Sec. 3, Ch. 335, L. 1977; R.C.M. 1947, 77-2301.2.

Cross-References

Civilian control of the military, Art. II, sec. 32, Mont. Const.

Authority of Governor to proclaim martial rule, 10-1-106.

10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, or air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, or accidents involving radiation byproducts or other hazardous materials.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department of military affairs.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property which timely action can avert or minimize.

(7) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(8) "Principal executive officer" means the mayor, chairman of the county commissioners, or other chief executive officer of a political subdivision.

(9) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

History: En. Sec. 3, Ch. 218, L. 1951; amd. Sec. 2, Ch. 220, L. 1953; Sec. 77-1303, R.C.M. 1947; amd. and redes. 77-2302 by Sec. 9, Ch. 94, L. 1974; amd. Sec. 4, Ch. 335, L. 1977; R.C.M. 1947, 77-2302; amd. Sec. 4, Ch. 430, L. 1983; amd. Sec. 2, Ch. 71, L. 1987.

10-3-104. General authority of the governor. (1) The governor is responsible for carrying out parts 1 through 4 of this chapter.

(2) In addition to any other powers conferred upon the governor by law, he may:

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if he considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an emergency or disaster area, the movement of persons within the area, and the occupancy of premises therein.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, the conditions which have brought about the declaration or which make possible termination of the state of emergency or disaster.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(1) thru (3).

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Call of forces, when authorized, Art. VI, sec. 13, Mont. Const.

Authority of Governor to proclaim martial rule, 10-1-106.

Extension of enlistments by Governor, 10-1-303.

Governor as commander-in-chief during emergencies, 10-3-305.

Governor's emergency powers and duties generally, 10-3-305.

Governor's proclamation of emergency, 10-3-505.

Closure of hunting and fishing during fire emergency, 87-3-106.

Powers of Governor during energy emergency, 90-4-309 through 90-4-318.

Governor to appoint board members of Western Interstate Nuclear Compact, 90-5-202.

10-3-105. Division of disaster and emergency services — duties. (1) A division of disaster and emergency services is established in the department of military affairs. The division shall have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department of military affairs through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program shall be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program due to limitations of funding, manpower, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of actual emergency or disaster, to insure the availability of adequately trained and equipped personnel in time of emergency or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with emergencies and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(n) have any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor.

History: (1), (3), (4)En. Sec. 7, Ch. 335, L. 1977; Sec. 77-2305.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 218, L. 1951; amd. Sec. 3, Ch. 220, L. 1953; amd. Sec. 7, Ch. 237, L. 1967; Sec. 77-1304, R.C.M. 1947; amd. and redes. 77-2303 by Sec. 10, Ch. 94, L. 1974; amd. Sec. 5, Ch. 335, L. 1977; Sec. 77-2303, R.C.M. 1947; R.C.M. 1947, 77-2303, 77-2305.1(part); amd. Sec. 5, Ch. 430, L. 1983.

Cross-References

Department of Military Affairs created, 2-15-1201.

Division created, 2-15-1204.

Department power to authorize construction on federal land, 18-2-102.

10-3-106. Communications. (1) The division shall coordinate whatever means exist for rapid and efficient communications in time of emergency or disaster.

(2) The division shall, in cooperation with the division of communications, department of administration, consider the desirability of supplementing communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communications system or network.

(3) The division shall, in cooperation with the division of communications and local political subdivisions, evaluate the possibility of multipurpose use of communications systems or networks for general state and local governmental purposes.

(4) The division shall assist political subdivisions in the orderly development of telecommunications systems complementary to the state telecommunications system or network.

History: En. 77-2307.4 by Sec. 12, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.4.

Cross-References

State government communication systems, Title 2, ch. 17, part 3.

Cooperation with local government, 10-3-107, 10-3-202.

Cooperation with other agencies, 10-3-201.

10-3-107. National defense highway plans. The department of military affairs shall:

(1) cooperate with the agencies of this and other states and of the federal government which are connected with national defense in the formulation and execution of plans for the rapid and safe movement over the highways of troops, vehicles of a military nature, and materials affecting the national defense;

(2) coordinate the activities of the department of transportation and the department of justice in a manner which will best serve to carry out any such plan for the rapid and safe movement of troops, vehicles, and materials;

(3) solicit the cooperation of officials of the various political subdivisions of the state in the proper execution of these plans.

History: (1)En. Sec. 2, Ch. 82, L. 1941; amd. Sec. 3, Ch. 94, L. 1953; amd. Sec. 1, Ch. 94, L. 1974; Sec. 32-1702, R.C.M. 1947; (2)En. Sec. 3, Ch. 82, L. 1941; amd. Sec. 4, Ch. 94, L. 1953; amd. Sec. 2, Ch. 94, L. 1974; Sec. 32-1703, R.C.M. 1947; R.C.M. 1947, 32-1702, 32-1703; amd. Sec. 6, Ch. 430, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Highway traffic safety program, Title 61, ch. 2, part 1.

10-3-108 through 10-3-110 reserved.

10-3-111. Personnel immune from liability. (1) Neither the state nor any political subdivision of the state nor the agents or representatives of the state or any political subdivision thereof are liable for personal injury or property damage sustained by any person appointed or acting as a volunteer civilian defense worker or member of any agency engaged in civilian defense activity during a disaster or catastrophe. This section does not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the workers' compensation law or any pension law or any act of congress.

(2) Neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof nor

any volunteer or auxiliary civilian defense worker or member of any agency engaged in civilian defense activity during a disaster or catastrophe, nor the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with parts 1 through 4 of this chapter or any order or rule promulgated under the provisions of parts 1 through 4 of this chapter or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivisions of the state, are liable for the death of or injury to persons or for damage to property as a result of any such activity.

History: En. Sec. 10, Ch. 218, L. 1951; Sec. 77-1310, R.C.M. 1947; amd. and redes. 77-2308 by Sec. 15, Ch. 94, L. 1974; rep. Sec. 15, Ch. 49, L. 1977; re-en. Sec. 2, Ch. 73, L. 1977; R.C.M. 1947, 77-2308.

Cross-References

Liability of governmental entities generally, Title 2, ch. 9.

Attorney's fees for militia members, 10-1-601.

Limitations on liability for emergency care, 27-1-714.

Limitations on liability of health professionals for emergency care, 41-1-405.

10-3-112. Employment requirements for personnel — political involvement of organizations prohibited. (1) A person may not be employed in any disaster and emergency services organization established under parts 1 through 4 of this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for disaster and emergency services shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

"I ...., swear (or affirm) that I will support and defend The Constitution of the United States and The Constitution of the State of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me, God."

(2) An organization for disaster and emergency services established under this chapter may not participate in any form of political activity, nor may it be employed directly or indirectly for political purposes.

History: (1)En. Sec. 13, Ch. 218, L. 1951; Sec. 77-1313, R.C.M. 1947; amd. and redes. 77-2311 by Sec. 18, Ch. 94, L. 1974; amd. Sec. 15, Ch. 335, L. 1977; Sec. 77-2311, R.C.M. 1947; (2)En. Sec. 12, Ch. 218, L. 1951; Sec. 77-1312, R.C.M. 1947; amd. and redes. 77-2310 by Sec. 17, Ch. 94, L. 1974; amd. Sec. 14, Ch. 335, L. 1977; Sec. 77-2310, R.C.M. 1947; R.C.M. 1947, 77-2310, 77-2311.

Cross-References

Oath of officers, 10-1-202.

Oath of enlistment, 10-1-302.

Discrimination by state, 49-2-308.

10-3-113. Identification — civil defense symbol. Disaster and emergency services organizations and personnel may continue to identify themselves by the use of the civil defense symbol.

History: En. 77-2315 by Sec. 19, Ch. 335, L. 1977; R.C.M. 1947, 77-2315.

Cross-References

"Civil defense" defined, 10-3-103.

Part 2
Intergovernmental Cooperation

10-3-201. Local and interjurisdictional emergency and disaster agencies and services. (1) Each political subdivision within this state shall designate a local or interjurisdictional agency responsible for emergency and disaster prevention and preparedness and coordination of response and recovery.

(2) The local or interjurisdictional disaster and emergency services agency shall receive assistance from the division in emergency and disaster prevention, preparedness, response, and recovery to the extent of the division's authority and responsibility.

(3) Each political subdivision shall adhere to the provisions of parts 1 through 4 of this chapter and the state disaster and emergency plan and program regarding the structure and responsibilities of the local or interjurisdictional disaster and emergency service agencies and their relationship to the division.

(4) The principal executive officer of each political subdivision shall notify the division of the manner by which the political subdivision is providing or securing emergency and disaster planning and services, identify the person who heads the agency from which planning and services are obtained, and furnish additional information as the division requires.

History: En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.1(1) thru (4).

Cross-References

Authority of principal executive officer, 10-3-406.

10-3-202. Mutual aid — cooperation. (1) Political subdivisions shall be encouraged and assisted by the division to conclude mutual aid arrangements with other public and private agencies within this state for reciprocal aid and assistance in coping with emergencies and disasters.

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions thereof and shall carry out arrangements of any such agreements relating to the local and political subdivision.

(4) In providing assistance under parts 1 through 4 of this chapter, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American national red cross, but nothing contained in parts 1 through 4 of this chapter lists or in any way affects the responsibilities of the American national red cross under the act approved January 5, 1905 (33 Stat. 559), as amended.

History: (1) thru (3)En. Sec. 8, Ch. 218, L. 1951; Sec. 77-1308, R.C.M. 1947; amd. and redes. 77-2306 by Sec. 13, Ch. 94, L. 1974; amd. Sec. 13, Ch. 49, L. 1977; amd. Sec. 10, Ch. 335, L. 1977; Sec. 77-2306, R.C.M. 1947; (4)En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; Sec. 77-2305.1, R.C.M. 1947; R.C.M. 1947, 77-2305.1(5), 77-2306.

Cross-References

State disaster and emergency plan, 10-3-301.

10-3-203. Acceptance of services, gifts, grants, and loans. (1) Whenever the federal government or any agency or officer thereof or any person, firm, or corporation shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of emergency or disaster services, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer and upon the acceptance the governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision and subject to the terms of the offer and the rules, if any, of the agency making the offer.

(2) The funds, items, and services set forth in subsection (1) are statutorily appropriated, as provided in 17-7-502, to the governor for the purposes set forth in subsection (1).

History: En. Sec. 11, Ch. 218, L. 1951; Sec. 77-1311, R.C.M. 1947; amd. and redes. 77-2309 by Sec. 16, Ch. 94, L. 1974; amd. Sec. 13, Ch. 335, L. 1977; R.C.M. 1947, 77-2309; amd. Sec. 6, Ch. 703, L. 1985.

Cross-References

Governor authorized to accept funds — designation of state agency, 17-3-105.

10-3-204. Intergovernmental arrangements. (1) This state enacts into law and enters into the interstate mutual aid compact with all states, as defined therein, which states have enacted or shall hereafter enact the compact in the form substantially contained in 10-3-207.

(2) The governor may enter into the compact with any state if he finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency and disaster planning, prevention, response, and recovery.

(3) Nothing in subsections (1) and (2) may be construed to limit previous or future entry of this state into the interstate mutual aid compact.

(4) All interstate mutual aid compacts and other interstate agreements dealing with disaster and emergency services shall be reviewed and made current at intervals not to exceed 4 years.

(5) If a person holds a license, certificate, or other permit issued by any state or political subdivision thereof evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(6) When considered of mutual benefit, the governor may, subject to limitations of law, enter into intergovernmental arrangements with neighbor-

ing provinces of Canada for the purpose of exchanging disaster and emergency services.

History: En. 77-2307.3 by Sec. 11, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.3; amd. Sec. 1, Ch. 228, L. 1985.

10-3-205. Authority to join interstate mutual aid compact — supplemental agreements. (1) The governor of the state of Montana is hereby authorized for and in the name of the state of Montana to join with other states in the interstate mutual aid compact.

(2) The governor of the state of Montana is hereby authorized to negotiate and execute such supplemental agreements as may be necessary and proper to fully carry into effect the terms and provisions of the interstate mutual aid compact as set forth in 10-3-207.

History: (1)En. Sec. 2, Ch. 213, L. 1951; Sec. 77-1402, R.C.M. 1947; (2)En. Sec. 4, Ch. 213, L. 1951; Sec. 77-1404, R.C.M. 1947; R.C.M. 1947, 77-1402, 77-1404; amd. Sec. 2, Ch. 228, L. 1985.

10-3-206. Repealed. Sec. 5, Ch. 228, L. 1985.

History: En. Sec. 3, Ch. 213, L. 1951; R.C.M. 1947, 77-1403.

10-3-207. Text of compact. The interstate mutual aid compact referred to in 10-3-204 and 10-3-205 reads as follows:

INTERSTATE MUTUAL AID COMPACT

Article I

The purpose of this compact is to provide voluntary assistance among participating states in responding to any disaster or imminent disaster that overextends the ability of local and state governments to reduce, counteract, or remove the danger. Assistance may include but is not limited to rescue, fire, police, medical, communication, and transportation services and facilities to cope with problems which require use of special equipment, trained personnel, or personnel in large numbers not locally available.

Article II

Article I, section 10, of the Constitution of the United States permits a state to enter into an agreement or compact with another state, subject to the consent of congress. Congress, through enactment of 50 U.S.C. 2281(g) and 2283 and the executive branch, by issuance of Executive Orders No. 10186 of December 1, 1950, encourages the states to enter into emergency, disaster, and civil defense mutual aid agreements or pacts.

Article III

It is agreed by participating states that the following conditions will guide implementation of the compact:

(1) Participating states through their designated officials are authorized to request and receive assistance from a participating state. Requests will be granted only if the requesting state is committed to the mitigation of the emergency and other resources are not immediately available.

(2) Requests for assistance may be verbal or in writing. If the request is made by other than written communication, it must be confirmed in writing as soon as practical after the request. A written request shall provide an

itemization of equipment and operators, types of expertise, and personnel or other resources needed. Each request must be signed by an authorized official.

(3) Personnel and equipment of the aiding state made available to the requesting state shall, whenever possible, remain under the control and direction of the aiding state. The activities of personnel and equipment of the aiding state must be coordinated by the requesting state.

(4) An aiding state has the right to withdraw some or all of its personnel and equipment whenever the personnel and equipment are needed by that state. Notice of intention to withdraw should be communicated to the requesting state as soon as possible.

Article IV

(1) The requesting state shall reimburse the aiding state as soon as possible after the receipt by the requesting state of an itemized voucher requesting reimbursement of costs.

(2) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for any damage to, loss of, or expense incurred in the operation of any equipment used in responding to a request for aid, and for the cost incurred in connection with such requests.

(3) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for the cost of compensation and death benefits to injured officers, agents, or employees and their dependents or representatives if such officers, agents, or employees sustain injuries or are killed while rendering aid pursuant to this arrangement and such payments are made in the same manner and on the same terms as if the injury or death were sustained within the aiding state.

Article V

(1) All privileges and immunities from liability, exemptions from law, ordinances, and rules and all pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees when performing their respective functions within the territorial limits of their respective political subdivisions apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this compact.

(2) All privileges and immunities from liability, exemptions from law, ordinances, and rules and workers' compensation and other benefits that apply to duly enrolled or registered volunteers when performing their respective functions at the request of their state and within its territorial limits apply to the same extent while performing their functions extraterritorially under the provisions of this compact. Volunteers may include but are not limited to physicians, surgeons, nurses, dentists, structural engineers, and trained search and rescue volunteers.

(3) The signatory states, their political subdivisions, municipal corporations, and other public agencies shall hold harmless the corresponding entities and personnel thereof from the other state with respect to the acts and omissions of its own agents and employees that occur while providing assistance pursuant to the common plan.

(4) Nothing in this arrangement may be construed as repealing or impairing any existing interstate mutual aid agreements.

(5) Upon enactment of this compact by two or more states, and annually by each January 1 thereafter, the participating states will exchange with each other the names of officials designated to request and provide services under this arrangement. In accordance with the cooperative nature of this arrangement, it is permissible and desirable for the states to exchange operational procedures to be followed in requesting assistance and reimbursing expenses.

(6) This compact becomes effective and is binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact becomes effective and binding as to any other state upon similar action by such state.

(7) This compact remains binding upon a party state until it enacts a law repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal may not take effect until the 30th consecutive day after the notice has been sent. Such withdrawal does not relieve the withdrawing state from its obligations assumed under this compact prior to the effective date of withdrawal.

History: En. Sec. 3, Ch. 228, L. 1985.

10-3-208. Rulemaking authority. The department of military affairs may adopt rules necessary to implement the interstate mutual aid compact.

History: En. Sec. 4, Ch. 228, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

State Planning and Execution

10-3-301. State disaster and emergency plan. (1) The state disaster and emergency plan and program may provide for:

(a) prevention and minimization of injury and damage caused by disaster;

(b) prompt and efficient response to an emergency or disaster;

(c) emergency relief;

(d) identification of areas particularly vulnerable to disasters;

(e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(f) organization of manpower and chains of command;

(g) coordination of federal, state, and local disaster and emergency activities; and

(h) other necessary matters.

(2) In preparing and maintaining the state disaster and emergency plan and program, the division may seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division may encourage them to seek advice from these sources.

History: En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; R.C.M. 1947, 77-2305.1(part); amd. Sec. 7, Ch. 430, L. 1983.

Cross-References

Energy supply emergencies — energy curtailment required, 90-4-307.

10-3-302. Declaration of emergency — effect and termination. (1) A state of emergency may be declared by the governor when he determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency shall activate the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies.

(3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which shall be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(4).

Cross-References

Authorization to transfer county funds for emergency relief, 7-31-2101.

Emergency powers of the Governor generally, 10-3-104.

Power of Governor to declare energy emergency, 90-4-310.

10-3-303. Declaration of disaster — effect and termination. (1) A state of disaster may be declared by the governor when he determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster shall activate the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies.

(3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which shall be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(5), (6).

Cross-References

Authorization to transfer county funds for emergency relief, 7-31-2101.

10-3-304. Dissemination. An executive order or proclamation issued under this part shall be disseminated promptly by means calculated to bring its contents to the attention of the general public. Unless the circumstances attendant upon the emergency or disaster prevent or impede it, the executive order or proclamation will be filed promptly with the division, the secretary of state, and clerk and recorders of the counties involved.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(7).

10-3-305. Governor commander-in-chief — duties. (1) During a state of emergency or disaster, the governor is commander-in-chief of the militia and of all other forces available for emergency or disaster duty. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in the state disaster and emergency plan and program and appropriate executive orders.

(2) The governor shall utilize the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall cooperate with and extend their services and facilities to the governor as he may request in the carrying out of the purposes of parts 1 through 4 of this chapter.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(8), (9).

Cross-References

Civilian control of military, Art. II, sec. 32, Mont. Const.

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Emergency powers of the Governor generally, 10-3-104.

10-3-306 through 10-3-310 reserved.

10-3-311. Emergency or disaster expenditures — restrictions. (1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and needs arising from an emergency or disaster, as defined in 10-3-103, which results in damage to the works, buildings, or property of the state or any political subdivision thereof or which menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that:

(a) such political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in sufficient amount to meet the emergency or disaster; or

(c) federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) No expenditures for flood-related damages may be made to assist a political subdivision that is sanctioned because it has flood hazard areas identified under the national flood insurance program, parts 59 through 77 of 44 C.F.R., and does not have in effect adequate regulations for such areas or has failed to enforce such regulations as required by the national flood insurance program.

(3) The governor is charged with the implementation of the program.

(4) The administration and development of rules for implementation of this section must be promulgated by the department.

History: (1)En. Sec. 1, Ch. 409, L. 1971; amd. Sec. 19, Ch. 577, L. 1977; Sec. 79-2501, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 409, L. 1971; Sec. 79-2503, R.C.M. 1947; R.C.M. 1947, 79-2501, 79-2503; amd. Sec. 1, Ch. 216, L. 1981; amd. Sec. 8, Ch. 430, L. 1983; amd. Sec. 1, Ch. 111, L. 1985; amd. Sec. 3, Ch. 71, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Adoption and levy of emergency budget by Board of County Commissioners, 7-6-2341 through 7-6-2345.

Adoption and levy of emergency budget by City Council or Commission, 7-6-4251 through 7-6-4255.

Authorization to transfer county funds for emergency relief, 7-31-2101.

Levying of emergency taxes by city and county, 10-3-405.

Adoption and levy of emergency budget by school district trustees, 20-9-161 through 20-9-166.

Energy emergency expenditures authorized, 90-4-318.

10-3-312. Maximum expenditure by governor — appropriation. (1) (a) Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $2 million in any biennium.

(b) Whenever an emergency or disaster due to fire is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $3 million in any biennium. The amount appropriated in this subsection (b) may be combined with the amount appropriated in subsection (1)(a) for an emergency or disaster due to fire.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and he is authorized to expend from the general fund, an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178.

History: En. Sec. 2, Ch. 409, L. 1971; R.C.M. 1947, 79-2502; amd. Sec. 1, Ch. 626, L. 1983; amd. Sec. 7, Ch. 703, L. 1985; amd. Sec. 2, Ch. 595, L. 1989; amd. Sec. 1, Ch. 256, L. 1991; amd. Sec. 1, Ch. 12, Sp. L. July 1992.

10-3-313. Temporary housing for disaster victims — site acquisition and preparation. (1) Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make such units available to any political subdivision of the state;

(b) to assist any political subdivision of this state which is the locus of temporary housing for emergency or disaster victims to acquire sites necessary for such temporary housing and to do all things required to prepare such site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

(ii) "passing through" funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under such regulations as he shall prescribe, to temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, or transportation (within or across the state) laws or regulations within this state when by proclamation he declares such suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

(3) Nothing contained in parts 1 through 4 of this chapter shall be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery.

History: En. 77-2312 by Sec. 16, Ch. 335, L. 1977; R.C.M. 1947, 77-2312.

10-3-314. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon his determination that a political subdivision of the state will suffer a substantial loss of tax and other revenues from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision, for a loan. The proceeds are statutorily appropriated, as provided in 17-7-502, to the governor, who may receive and disburse the proceeds of any approved loan to any applicant political subdivision.

(2) to determine the amount needed by any applicant political subdivision to restore or resume its governmental functions and to certify the same to the federal government. However, no application amount may exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon his review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the revenues of the political subdivision are insufficient to meet its operating expenses, including additional emergency- or disaster-related expenses of a political subdivision operation character.

History: En. 77-2313 by Sec. 17, Ch. 335, L. 1977; R.C.M. 1947, 77-2313; amd. Sec. 8, Ch. 703, L. 1985.

10-3-315. Debris and wreckage removal in emergencies or disasters. (1) Whenever the governor has declared a state of emergency or state of disaster to exist under the laws of this state or the president, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(a) notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water debris and wreckage which may threaten public health or safety or public or private property in any state of emergency or state of disaster declared by the governor or major disaster as declared by the president;

(b) to accept funds from the federal government and utilize such funds to make grants to any political subdivision for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(2) (a) Authority under this section shall not be exercised unless the affected political subdivision, corporation, organization, or individual shall first present an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the state government against any claim arising from such removal.

(b) Whenever the governor provides for clearance of debris or wreckage pursuant to subsection (1)(a) or (1)(b), employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

History: En. 77-2314 by Sec. 18, Ch. 335, L. 1977; R.C.M. 1947, 77-2314.

Cross-References

Liability of governmental entities generally, Title 2, ch. 9.

Attorney's fees for militia members, 10-1-601.

Part 4
Local and Interjurisdictional Planning and Execution

10-3-401. Local and interjurisdictional disaster and emergency plan — distribution. (1) Each political subdivision eligible to receive funds under this chapter shall prepare a local or interjurisdictional disaster and emergency plan and program covering the area for which that political subdivision is responsible. This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

(2) The political subdivision shall prepare and distribute on behalf of the principal executive officers, in written form, a clear and complete statement of:

(a) the emergency responsibilities of all local agencies, if any, and officials;

(b) the disaster and emergency chain of command;

(c) local evacuation authority and responsibility; and

(d) local authority and responsibility for control of ingress and egress to and from an emergency or disaster area.

History: En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.1(5), (6); amd. Sec. 9, Ch. 430, L. 1983; amd. Sec. 4, Ch. 71, L. 1987.

Cross-References

Local and interjurisdictional emergency and disaster agencies and services, 10-3-201.

Mutual aid and cooperation, 10-3-202.

State disaster and emergency plan, 10-3-301.

10-3-402. Local emergency — declaration and termination. (1) A local emergency proclamation or disaster declaration may be issued only by the principal executive officer of a political subdivision.

(2) An emergency proclamation may be issued by order or resolution whenever the principal executive officer determines there is an emergency.

(3) An emergency proclamation may terminate with a disaster declaration or when the principal executive officer determines that the emergency no longer exists.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(1), (2); amd. Sec. 3, Ch. 595, L. 1989.

Cross-References

Adoption of emergency resolution by County Commissioners, 7-6-2341, 7-6-2342.

Adoption of emergency resolution by City Council or Commission, 7-6-4251, 7-6-4252.

Adoption of emergency resolution by school district trustees, 20-9-163.

10-3-403. Local disaster — declaration and termination. (1) A disaster declaration may be issued by order or resolution whenever the principal executive officer determines a disaster is occurring or has occurred.

(2) A disaster declaration may be terminated when the principal executive officer determines that the disaster conditions no longer exist.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(3); amd. Sec. 4, Ch. 595, L. 1989.

10-3-404. Contents of order — effect. (1) An order or resolution declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, and the conditions which have brought about the proclamation or declaration or which make possible termination of the state of emergency or disaster. Such order or resolution shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be filed promptly with the division and the agency charged with recording the official records of the political subdivision.

(2) The effect of an emergency proclamation or a disaster declaration is to activate applicable parts of the local or interjurisdictional disaster and emergency plan and program and to authorize the furnishing of aid and assistance in accordance with such plans and programs.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(4), (5); amd. Sec. 10, Ch. 430, L. 1983.

10-3-405. Levying emergency tax — disposition of surplus. (1) The governing body of the city or town or the governing body of the county, or both, shall estimate expenditures and levy an emergency millage to cover the expenditures. The millage levied by the governing body of the city or town shall not exceed 2 mills on the municipality's taxable valuation. The millage levied by the governing body of the county shall not exceed 2 mills on the taxable valuation of the county outside the municipalities.

(2) No expenditure of revenue received from the millage shall be made without approval of the appropriate levying body.

(3) An additional levy or levies may be made by the appropriate levying body, providing that the sum of the levies for emergencies as set forth in this section shall not exceed 2 mills in any one year.

(4) All levies under this section may be passed only by a unanimous vote of the appropriate body.

(5) Funds levied for an emergency and remaining when no further expenditures are necessary shall remain in a separate emergency fund and shall be used only for expenditures arising from future emergencies.

History: (1) thru (4)En. Sec. 5, Ch. 97, L. 1967; Sec. 11-4305, R.C.M. 1947; (5)En. Sec. 6, Ch. 97, L. 1967; Sec. 11-4306, R.C.M. 1947; R.C.M. 1947, 11-4305(1) thru (4), 11-4306; amd. Sec. 2, Ch. 216, L. 1981.

Cross-References

Procedure to make emergency expenditures by Board of County Commissioners, 7-6-2341 through 7-6-2345.

Procedure to make emergency expenditures by City Commission or Council, 7-6-4251 through 7-6-4255.

Authority of County Commissioners to transfer funds for emergency relief, 7-31-2101.

Emergency or disaster expenditures authorized by Governor, 10-3-311.

Procedure to make emergency expenditures by school district trustees, 20-9-161 through 20-9-166.

10-3-406. Authority of principal executive officer. Upon the declaration of an emergency or disaster under 10-3-402 or 10-3-403 and the issuance of an order as required by 10-3-404, the principal executive officer may:

(1) direct and compel the evacuation of all or part of the population from an emergency or disaster area within that political subdivision when necessary for the preservation of life or other disaster mitigation, response, or recovery; and

(2) control the ingress and egress to and from an emergency or disaster area, the movement of persons within the area, and the occupancy of premises therein.

History: En. Sec. 5, Ch. 71, L. 1987; amd. Sec. 5, Ch. 595, L. 1989.

Cross-References

Local and interjurisdictional emergency and disaster agencies and services, 10-3-201.

Part 5

Emergency Resource Management

10-3-501. Policy of state. (1) The legislature recognizes that an attack upon the United States is a possibility; that such attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to postattack recovery and rehabilitation necessarily are predicated on the ability of the states and their political subdivisions to prepare for and respond promptly to the problems created by an attack. Therefore, it is hereby found and declared to be necessary to confer upon the governor and upon the executive heads of governing bodies of political subdivisions of this state the emergency powers provided for in this part.

(2) It is further declared to be the purpose of this part and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available manpower, resources, and facilities in an emergency.

History: En. Sec. 2, Ch. 297, L. 1967; Sec. 77-1502, R.C.M. 1947; amd. and redes. 77-2401 by Sec. 19, Ch. 94, L. 1974; R.C.M. 1947, 77-2401.

10-3-502. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Emergency resources management plan" means that plan prepared by the department of military affairs, approved by the federal office of emergency planning, and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids or other forms of warfare upon this state or any other state or territory of the United States.

(3) "Political subdivision" means any county, city, town, or township of the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R.C.M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974; R.C.M. 1947, 77-2402(part).

10-3-503. Governor's powers and duties. (1) The governor has general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(2) In performing his duties under this part, the governor may cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing his duties under this part and to effect its policies and purpose, the governor may make, amend, and rescind the necessary orders and rules to carry out this part within the limits of authority conferred upon him, with due consideration of the emergency resources management plans of the federal government.

History: En. Sec. 5, Ch. 297, L. 1967; Sec. 77-1505, R.C.M. 1947; amd. and redes. 77-2403 by Sec. 21, Ch. 94, L. 1974; R.C.M. 1947, 77-2403.

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Call of forces when authorized, Art. VI, sec. 13, Mont. Const.

Authority of Governor to proclaim martial rule, 10-1-106.

Extension of enlistments by Governor, 10-1-303.

Governor as commander-in-chief during emergencies, 10-3-305.

Governor's emergency powers and duties generally, 10-3-503.

Governor's proclamation of emergency, 10-3-505.

10-3-504. Emergency resource management plan. The plan shall provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. It shall be supplemental to the national plan for emergency preparedness adopted by the president of the United States and shall become operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state plan will substitute for and replace the federal program until such time as the federal program becomes effective in the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R.C.M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974; R.C.M. 1947, 77-2402(part).

Cross-References

State disaster and emergency plan, 10-3-301.

10-3-505. Proclamation of emergency — effect and termination. (1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the postattack recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a postattack recovery and rehabilitation emergency. Any such proclamation shall be ineffectual unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within 45 days.

(2) During the period when the proclamation issued under subsection (1) of this section is in force or during the continuance of any emergency declared by the president of the United States or the congress calling for postattack recovery and rehabilitation activities, subject to the limitations set forth in this part and in a manner consistent with any rules or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules and orders to:

(a) control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation, or other means, the use, sale, or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services;

(b) prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) take such other action as may be necessary for the management of resources following an attack.

(3) All rules and orders issued under authority conferred by this part have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section when a copy of the rule or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be considered a complete and sufficient substitute. All existing laws, ordinances, rules, and orders inconsistent with the provisions of this part or any rule or order issued under the authority thereof shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised under a proclamation of emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction or to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress, however, the proclamation shall terminate automatically 6 months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature.

History: En. Sec. 6, Ch. 297, L. 1967; Sec. 77-1506, R.C.M. 1947; amd. and redes. 77-2404 by Sec. 22, Ch. 94, L. 1974; amd. Sec. 14, Ch. 49, L. 1977; R.C.M. 1947, 77-2404.

Cross-References

Declaration of emergency, 10-3-302.

Declaration of disaster, 10-3-303.

Debris and wreckage removal in emergencies or disasters, 10-3-315.

Part inoperative upon convening of Legislature, 10-3-609.

10-3-506. Judicial inquiry of proclamation. Every proclamation and the facts related in the proclamation issued under this part are subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether the action was reasonable under the circumstances.

History: En. Sec. 7, Ch. 297, L. 1967; Sec. 77-1507, R.C.M. 1947; amd. and redes. 77-2405 by Sec. 23, Ch. 94, L. 1974; R.C.M. 1947, 77-2405.

Cross-References

Jurisdiction of Supreme Court, Art. VII, sec. 2, Mont. Const.

Original jurisdiction of Supreme Court, 3-2-202.

10-3-507. Penalty for violation of rules. A person violating any of the rules or orders adopted and promulgated under 10-3-505 shall upon conviction be subject to a fine not to exceed $10,000 or to a term of imprisonment not to exceed 5 years, or both.

History: En. Sec. 8, Ch. 297, L. 1967; Sec. 77-1508, R.C.M. 1947; amd. and redes. 77-2406 by Sec. 24, Ch. 94, L. 1974; R.C.M. 1947, 77-2406.

Part 6
Continuity of Government

Part Cross-References

Continuity in government, Art. III, sec. 2, Mont. Const.

10-3-601. Citation of part. This part may be cited as "The Continuity in Government Act".

History: En. Sec. 1, Ch. 268, L. 1967; amd. Sec. 46, Ch. 100, L. 1973; R.C.M. 1947, 82-3801; amd. Sec. 11, Ch. 430, L. 1983.

10-3-602. Filling vacancy in governorship. Following an enemy attack, the line of succession to the office of governor shall be extended as provided in Title 2, chapter 16, part 5.

History: En. Sec. 2, Ch. 268, L. 1967; amd. Sec. 47, Ch. 100, L. 1973; R.C.M. 1947, 82-3802; amd. Sec. 6, Ch. 142, L. 1979.

Cross-References

Officers of the Senate and House of Representatives, 5-2-221.

10-3-603. Filling vacancy in boards of county commissioners. In case of a vacancy on any board of county commissioners occurring during or following an enemy attack, if the judge or judges of the judicial district in which the vacancy occurs be not available to make the appointment then the district judges of all other judicial districts shall be authorized to make such appointment. Provided, however, that of the available judges in the state of Montana that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

History: En. Sec. 3, Ch. 268, L. 1967; amd. Sec. 48, Ch. 100, L. 1973; R.C.M. 1947, 82-3803.

Cross-References

Filling vacancies created by other causes, 7-4-2106.

10-3-604. Filling vacancy in city or town governing bodies. In the event that no members of a city or town council or commission are available following an enemy attack then the board of county commissioners of the county in which such city or town is located shall appoint successors to act in place of the unavailable members.

History: En. Sec. 4, Ch. 268, L. 1967; R.C.M. 1947, 82-3804.

Cross-References

Filling vacancies created by other causes, 7-4-4112.

10-3-605. Filling vacancy for city or town executive. In the event that the executive head of any city or town is unavailable following an enemy attack to exercise the powers and discharge the duties of his office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of such city or town.

History: En. Sec. 5, Ch. 268, L. 1967; R.C.M. 1947, 82-3805.

Cross-References

Filling of vacancy created by other causes, 7-4-4112.

10-3-606. Quorum requirement. If, following an enemy attack, the legislature or any state or local government council, board, or commission is unable to assemble a quorum as defined by the constitution of Montana or by statute, then those legislators or members of the council, board, or commission available for duty shall constitute the legislature, board, or commission and quorum requirements shall be suspended. Where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

History: En. Sec. 6, Ch. 268, L. 1967; R.C.M. 1947, 82-3806.

Cross-References

Quorum of Legislature, Art. V, sec. 10, Mont. Const.

Quorum of City or Town Council, 7-5-4121.

Quorum of school district trustees, 20-3-322.

10-3-607. Relocating seat of state government. If the seat of state government at Helena is rendered unsuitable for use in that capacity, the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. He shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space, and such other factors as may seem to him pertinent. Such move of the seat of government shall be effective until it is again moved by proclamation of the governor or action by the legislature.

History: En. Sec. 7, Ch. 268, L. 1967; R.C.M. 1947, 82-3807; amd. Sec. 12, Ch. 430, L. 1983.

Cross-References

Continuity in government, Art. III, sec. 2, Mont. Const.

Change of venue of District Court in emergency, 3-5-405.

Proclamation of emergency — effect and termination, 10-3-505.

10-3-608. Relocating seat of local government. Following an enemy attack in which the seat of local government of any political subdivision of the state shall have been rendered unsuitable for use in that capacity, in the opinion of the governing body of that political subdivision, such seat of government may be moved by said governing body to such other location as it deems most suitable.

History: En. Sec. 8, Ch. 268, L. 1967; R.C.M. 1947, 82-3808.

Cross-References

Change of venue of District Court in emergency, 3-5-405.

County buildings — replacement or repair, 7-14-2524.

Proclamation of emergency — effect and termination, 10-3-505.

10-3-609. Part inoperative upon convening of legislature. The provisions of this part shall become inoperative at the time of the convening of the first legislature following the emergency which originally made such provisions operative.

History: En. Sec. 9, Ch. 268, L. 1967; R.C.M. 1947, 82-3809.

Cross-References

Proclamation of emergency — effect and termination, 10-3-505.

Part 7
Tactical Incident Assistance

10-3-701. Short title. This part may be cited as the "Tactical Incident Assistance Act".

History: En. Sec. 1, Ch. 455, L. 1989.

10-3-702. Definitions. As used in this part, the following definitions apply:

(1) "Jurisdiction" means the jurisdiction of any law enforcement agency within Montana.

(2) "Tactical incident" means any situation in which it is reasonable to expect the possibility of the loss of life or the taking of a hostage unless extraordinary steps are taken. These situations may include but are not limited to:

(a) a barricaded gunman;
(b) a person taken hostage;
(c) arrests in extraordinary circumstances;
(d) civil disorder;
(e) terrorist activity;
(f) protection of a dignitary; and
(g) courtroom security in extraordinary circumstances.

(3) "Tactical team" means a small group of highly disciplined law enforcement officers trained to provide a quick and ready response to high risk conditions and situations that go beyond the capabilities of normally trained and equipped officers. With specialized training, tactics, and equipment, this small group of officers provides a greater expectation of resolving incidents without loss of property, injury, or loss of life.

History: En. Sec. 2, Ch. 455, L. 1989.

10-3-703. Tactical team aiding another jurisdiction. (1) If a tactical incident exceeds the capability of a local law enforcement agency, the agency administrator may request the assistance of a tactical team from another jurisdiction.

(2) A tactical team called to another jurisdiction has peace officer status in that jurisdiction under the authority of the requesting agency.

History: En. Sec. 3, Ch. 455, L. 1989.

10-3-704. Local agency to contact national guard. (1) If a tactical incident exceeds the capability of a local law enforcement agency, the agency administrator may call the national guard staff duty office for assistance as provided in 10-3-705.

(2) The national guard staff duty officer shall inform the governor of the request.

History: En. Sec. 4, Ch. 455, L. 1989.

10-3-705. Tactical incident — national guard assistance. (1) Upon request by a local law enforcement agency administrator, the governor may order the national guard to provide transportation services and the use of national guard equipment to the requesting agency tactical team or to tactical teams that are providing assistance to the requesting agency during a tactical incident.

(2) This section does not give the national guard the status or authority of peace officers.

History: **En. Sec. 5, Ch. 455, L. 1989.**

Cross-References

Authority of Governor to proclaim martial rule, 10-1-106.

Governor's emergency powers and duties generally, 10-3-305.

Parts 8 through 10 reserved

Part 11

Interstate Emergency Services

Part Cross-References

Intergovernmental cooperation, Title 10, ch. 3, part 2.

10-3-1101. Short title. This part shall be known and may be cited as the "Interstate Emergency Services Mutual Aid Act".

History: **En. Sec. 1, Ch. 5, L. 1989.**

10-3-1102. Purpose. It is the purpose of this part to permit one or more fire protection services, emergency medical care providers, or local government subdivisions of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States in order to facilitate and coordinate efficient, cooperative firefighting efforts directed toward protection of life and property in areas transcending state boundaries that, due to geographic remoteness, population sparsity, and economic or other factors, are in need of such services.

History: **En. Sec. 2, Ch. 5, L. 1989.**

10-3-1103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Emergency medical care provider" means a local government subdivision or other entity, whether public or private, licensed by the state to provide emergency medical services pursuant to Title 50, chapter 6.

(2) "Fire protection service" means a paid or volunteer fire department, fire company, or other fire suppression entity organized under the laws of this state, any party state, or an agency of the government of the United States.

(3) "Local government subdivision" means the local governmental entity, other than state government, including but not limited to incorporated towns and cities, townships, and counties.

(4) "Mutual aid agreement" or "agreement" means an agreement, consistent with the purposes of this part, by one or more fire protection services, emergency medical care providers, or local government subdivisions of this state with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States.

(5) "Party emergency service" means a fire protection service, emergency medical care provider, local government subdivision, or agency of the United States that is a party to a mutual aid agreement as set forth in this part.

History: En. Sec. 3, Ch. 5, L. 1989.

10-3-1104. Authorization to enter agreement — general content — authority. (1) Any one or more fire protection services, emergency medical care providers, or local government subdivisions of this state may enter into a mutual aid agreement with any one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States to provide emergency services to the area covered by the agreement. The agreement must be authorized and approved by the governing body of each party to the agreement that is not an agency of the United States government.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) A mutual aid agreement grants a fire protection service or emergency medical care provider of this state authority to operate outside of the state and grants authority for a fire protection service or emergency medical care provider of another state or the United States to operate within this state as if the fire service or emergency medical care provider were organized and operated under the laws of this state.

History: En. Sec. 4, Ch. 5, L. 1989.

10-3-1105. Detailed content of agreement. The agreement authorized by 10-3-1104 must specify the following:

(1) the purpose of the agreement;

(2) the precise organization, composition, and nature of any separate legal entity created by the agreement;

(3) the duration of the agreement;

(4) the manner of financing the agreement and establishing and maintaining a budget therefor;

(5) a provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(6) the exact chain of command or delegation of authority to be followed by party emergency services acting under the provisions of the agreement;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and

(8) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

History: En. Sec. 5, Ch. 5, L. 1989.

10-3-1106. Submission of agreement to attorney general. (1) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the state attorney general.

(2) The attorney general shall approve an agreement submitted to him under this part unless he finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the appropriate governing bodies of the fire protection services, emergency medical care providers, and local government subdivisions.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission to him, it is considered approved.

History: **En. Sec. 9, Ch. 5, L. 1989.**

10-3-1107. Filing of agreement. Within 20 days after approval by the attorney general, an agreement made pursuant to this part must be filed in the office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state.

History: **En. Sec. 10, Ch. 5, L. 1989.**

Cross-References

Duties of Secretary of State, 2-15-401.

Role and duties of County Clerk, 7-4-2611.

Fees of County Clerk, 7-4-2631.

10-3-1108 through 10-3-1110 reserved.

10-3-1111. Agreement not to relieve agency of duties. No agreement made under this part may relieve any fire protection service, emergency medical care provider, or local government subdivision of this state of a duty imposed upon it by law. Timely performance of such a duty by a joint board or other legal or administrative entity created by a mutual aid agreement may be offered in satisfaction of the duty.

History: **En. Sec. 7, Ch. 5, L. 1989.**

Cross-References

Liability of governmental entities generally, Title 2, ch. 9.

Limitations on liability for emergency care, 27-1-714.

Emergencies and special situations, 41-1-405.

10-3-1112. Limitation of powers. Except for the right granted by this part to jointly exercise powers, this part does not authorize any fire protection service, emergency medical care provider, or local government subdivision of this state to exercise a power that it is not otherwise authorized to exercise.

History: **En. Sec. 8, Ch. 5, L. 1989.**

10-3-1113. Right of state in actions involving agreements. In any case or controversy involving performance or interpretation of or liability under a mutual aid agreement entered into between one or more fire protection services, emergency medical care providers, or local government subdivisions of this state and one or more fire protection services, emergency medical care providers, or local government subdivisions of another state or of the United States, the parties to the agreement are the real parties in interest. This state may maintain an action against any fire protection service, emergency medical care provider, or local government subdivision whose default, failure, performance, or other conduct caused or contributed to a liability incurred by the state.

History: **En. Sec. 6, Ch. 5, L. 1989.**

10-3-1114. Effect of other law. The procedures and remedies provided in this part apply to the exclusion of those remedies and procedures for interlocal agreements generally under Title 7, chapter 11, part 1.

History: **En. Sec. 12, Ch. 5, L. 1989.**

10-3-1115. Authorization to appropriate funds for purpose of agreement. A fire protection service, emergency medical care provider, or local government subdivision of this state may appropriate funds for and may sell, lease, or otherwise supply material to any entity created for the purpose of performance of an agreement and may provide such personnel or services therefor as are within its authority to furnish.

History: **En. Sec. 11, Ch. 5, L. 1989.**

CHAPTER 4

STATE EMERGENCY TELEPHONE SYSTEM

Part 1 — Emergency Telephone System Plans

10-4-101. Definitions.
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10-4-211. Provider required to hold fee in trust for state — penalty and interest.
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10-4-301. Establishment of emergency telecommunications account.
10-4-302. Distribution of account by department.
10-4-303. Limitation on use of funds.

Chapter Cross-References

State government communication systems, Title 2, ch. 17, part 3.

Regulation of communication utilities, Title 69, ch. 3 and 6.

Part 1

Emergency Telephone System Plans

10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Account" means the 9-1-1 emergency telecommunications account established in 10-4-301.

(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "Direct dispatch method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(4) "Emergency" means any event that requires dispatch of a public or private safety agency.

(5) "Emergency services" means services provided by any public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(6) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in subsection (6)(a).

(7) "Local government" means any city, county, or political subdivision of the state and its agencies.

(8) "Minimum 9-1-1 service" means a telephone service meeting the standards established in 10-4-102 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point. "Minimum 9-1-1 services" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, for transferring the call to another point, when appropriate.

(9) A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

(10) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(11) "Provider" means a public utility, cooperative telephone company, or any other entity that provides telephone exchange access services.

(12) "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

(13) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and which may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

(14) "Relay method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays such information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(15) "Subscriber" means an end user who receives telephone exchange access services.

(16) "Transfer method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers such a request to an appropriate public safety answering agency or other provider of emergency services.

History: En. Sec. 1, Ch. 635, L. 1985; amd. Sec. 30, Ch. 370, L. 1987.

10-4-102. Department of administration duties and powers. (1) The department shall assist in the development of 9-1-1 systems in the state. The department shall:

(a) establish procedures for determining and evaluating requests for variations from minimum 9-1-1 service;

(b) upon request of a 9-1-1 jurisdiction, assist in planning an emergency 9-1-1 telephone system;

(c) establish criteria for evaluating plans;

(d) monitor implementation of approved plans for compliance with the plan and use of funding; and

(e) as it finds necessary, report to the legislature the progress made in implementing a statewide emergency telephone system.

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's departments, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council.

History: En. Sec. 3, Ch. 635, L. 1985; amd. Sec. 20, Ch. 112, L. 1991; amd. Sec. 16, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 at beginning of (1)(e) substituted "as it finds necessary" for "as provided in 5-11-210".

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-4-103. Emergency telephone system requirements. (1) Every public and private safety agency in this state may establish or participate in an emergency telephone system.

(2) An emergency telephone system must include:

(a) a 24-hour communications facility automatically accessible anywhere in the 9-1-1 jurisdiction's service area by dialing 9-1-1;

(b) direct dispatch of public and private safety services in the 9-1-1 jurisdiction or relay or transfer of 9-1-1 calls to an appropriate public or private safety agency; and

(c) a 24-hour communications facility equipped with at least two trunk-hunting local access circuits provided by the local telephone company's central office.

(3) The primary emergency telephone number within the state is 9-1-1, but a public safety answering point shall maintain both a separate seven-digit secondary emergency number for use by the telephone company operator and a separate seven-digit nonemergency number.

History: En. Sec. 2, Ch. 635, L. 1985.

10-4-104. Agreements among safety agencies for rendering emergency services. (1) Public or private safety agencies sharing common boundaries may enter into agreements which provide that an emergency unit dispatched by an emergency telephone system established in accordance with 10-4-103 must render emergency services without regard to jurisdictional boundaries.

(2) A public safety agency with jurisdictional responsibilities must in all cases be notified by the public safety answering point of a request for service in the agency's jurisdiction.

History: En. Sec. 7, Ch. 635, L. 1985.

10-4-105 through 10-4-110 reserved.

10-4-111. Submission of preliminary plans for 9-1-1 jurisdictions — review — cost estimates. (1) A 9-1-1 jurisdiction may submit a preliminary plan for establishing an emergency telephone system in accordance with 10-4-103 to:

(a) public and private safety agencies in the 9-1-1 jurisdiction;

(b) the department; and

(c) providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) The department shall review the preliminary plan for compliance with 10-4-103 and rules adopted pursuant to 10-4-102 and report its approval or disapproval to the 9-1-1 jurisdiction within 90 days of receipt of the plan.

(3) A provider of telephone service in the 9-1-1 jurisdiction's service area shall, within 90 days of receipt of the plan, provide the 9-1-1 jurisdiction with a good faith estimate of the cost to the 9-1-1 jurisdiction for implementing the plan.

History: En. Sec. 4, Ch. 635, L. 1985.

10-4-112. Submission and approval of final plans — exception. (1) A 9-1-1 jurisdiction shall submit a proposed final plan for establishing an emergency telephone system pursuant to 10-4-103 within 1 year from receipt of the department's approval of its preliminary plan to:

(a) public and private safety agencies in the 9-1-1 jurisdiction;

(b) the department; and

(c) providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) In addition to other matters required by 10-4-103, the final plan must include a description of all capital and recurring costs for the proposed emergency 9-1-1 telephone system.

(3) The department shall determine whether the final plan complies with 10-4-103 and rules adopted pursuant to 10-4-102. Subject to 10-4-113, if the department determines that the plan complies, it shall approve the plan, or if the department determines that the plan does not comply, it shall disapprove the plan. The department shall inform the 9-1-1 jurisdiction of its decision within 180 days of receipt of the plan. In any statement approving a final plan, the department shall indicate a timetable in which the provider shall undertake necessary telephone system conversions. The timetable must be such that conversions may not be required unless sufficient funds to compensate the provider for its conversion costs are available within 1 year of the initial installation of the 9-1-1 system.

History: En. Sec. 5, Ch. 635, L. 1985.

10-4-113. Requirement for approval of final plan — department to insure compliance. The department may not approve the preliminary or final plan of a 9-1-1 jurisdiction unless the plan is accompanied by a written approval from the governing bodies of all participating public and private safety agencies included in the 9-1-1 jurisdiction.

History: En. Sec. 6, Ch. 635, L. 1985.

10-4-114 through 10-4-120 reserved.

10-4-121. Pay phones to be converted to allow emergency calls without charge. Every provider of telephone service or other owner of a pay station telephone in an area served by an emergency telephone system established pursuant to 10-4-103 must convert every pay station telephone to permit dialing 9-1-1 or the telephone company operator without deposit of a coin or other charge to the caller. Conversion must be completed by or before the time the emergency telephone system is operational.

History: En. Sec. 8, Ch. 635, L. 1985.

Part 2
Funding

10-4-201. Fee imposed for telephone exchange access services. (1) Except as provided in 10-4-202, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services.

(2) The subscriber paying for exchange access line services is liable for the fee imposed by this section.

(3) The provider shall collect the fee. The amount of the fee collected by the provider is considered payment by the subscriber for that amount of fee.

(4) Any return made by the provider collecting the fee is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return.

History: En. Sec. 9, Ch. 635, L. 1985.

Cross-References

Cooperatives subject to fee, 35-18-503.

10-4-202. Exemptions from fee imposed. The fee imposed by 10-4-201 does not apply to:

(1) services that the state is prohibited from taxing under the constitution or laws of the United States or the constitution or laws of the state of Montana; or

(2) amounts paid by depositing coins in a public telephone.

History: En. Sec. 10, Ch. 635, L. 1985.

10-4-203. Provider required to maintain record of collections. Every provider responsible for the collection of the fee imposed by 10-4-201 shall keep records, render statements, make returns, and comply with rules adopted by the department of revenue with respect to the fee. Whenever necessary in the judgment of the department of revenue, it may require the provider or subscriber to make returns, render statements, or keep records sufficient to show whether there is liability for the fee.

History: En. Sec. 11, Ch. 635, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-4-204. Deadlines for filing returns. (1) The provider collecting the fee under 10-4-201 must file a return with the department of revenue on or before the last day of the month following the end of each calendar quarter, reporting the amount of fee due on exchange access line services during the quarter. Returns are subject to the penalty for false swearing provided in 45-7-202.

(2) When a return of the fee is required, the provider required to make the return shall pay the fee due the department of revenue at the time fixed for filing the return.

(3) The provider shall pay the fee based on the net amount billed for the exchange access service fee during the quarter.

(4) As used in this section, the "net amount billed for the exchange access service fee" equals the gross amount billed for such service, less adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate adjustments.

History: En. Sec. 12, Ch. 635, L. 1985.

10-4-205. Refund to provider for excess payment of fee. If the amount paid by a provider to the department of revenue exceeds the amount of fee owed, the department of revenue shall refund the amount of the excess payment, with interest on the excess payment at the rate of 0.5% a month or fraction of a month from the date of payment of the excess until the date of the refund. A refund may not be made to a provider who fails to claim the refund within 5 years after the due date for filing of the return with respect to which the claim for refund relates.

History: En. Sec. 13, Ch. 635, L. 1985; amd. Sec. 1, Ch. 229, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 229 in last sentence increased time for claiming refund from 2 years to 5 years; and made minor changes in style.

10-4-206. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of fee, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor through reorganization, merger, or consolidation or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever date is later, to the date the department of revenue approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of revenue for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

History: En. Sec. 11, Ch. 676, L. 1991.

Cross-References

Returns and payment of tax — penalty and interest — refunds — credits, 15-30-142.

10-4-207. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue.

History: En. Sec. 15, Ch. 676, L. 1991.

10-4-208 through 10-4-210 reserved.

10-4-211. Provider required to hold fee in trust for state — penalty and interest. (1) Every provider required to collect the fee imposed by 10-4-201 holds it in trust for the state of Montana and for the payment thereof to the department of revenue in the manner and at the time provided by 10-4-204.

(2) (a) If a provider required to collect the fee fails to remit any amount held in trust for the state of Montana or if a subscriber fails to pay the fee on or before the last day of the month following the end of each calendar quarter, the department of revenue shall add to the amount of the delinquent fee, in addition to any other penalty provided by law, a penalty equal to 10% of the delinquent fee plus interest at the rate of 1% a month or fraction of a month computed on the amount of the delinquent fee plus any unpaid penalties and

interest. Interest is computed from the date the fee is due until the date of payment.

(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect.

(3) (a) When a deficiency is determined and the additional fee becomes final, the department of revenue shall mail a notice and demand for payment to the provider. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

(4) The 10% penalty provided for in subsection (3)(b) may be waived by the department of revenue if the provider establishes that the failure to pay the proper amount of fees was due to reasonable cause and was not due to neglect.

(5) The department of revenue may enforce collection by the issuance of a warrant for distraint for the collection of the delinquent amount and all penalties, interest, and collection charges accrued thereon. The warrant is governed by the provisions of Title 15, chapter 1, part 7.

History: En. Sec. 14, Ch. 635, L. 1985; amd. Secs. 1, 19, Ch. 676, L. 1991.

Cross-References

Trust code, Title 72, ch. 33 through 36.

10-4-212. Provider considered a taxpayer under provisions for fee. Unless the context requires otherwise, the provisions of Title 15 referring to the audit and examination of reports and returns, determination of deficiency assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences, appeals to the department of revenue, appeals to the state tax appeal board, and procedures relating thereto apply to this part as if the fee were a tax imposed upon or measured by net income. The provisions apply to the subscriber liable for the fee and to the provider required to collect the fee. Any amount collected and required to be remitted to the department of revenue is considered a tax upon the provider required to collect it, and that provider is considered a taxpayer.

History: En. Sec. 15, Ch. 635, L. 1985; amd. Sec. 19, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 near end of first sentence substituted "this part" for "10-4-201 through 10-4-205 and 10-4-211"; and made minor changes in style.

Part 3

Emergency Telephone System Account — Usage

10-4-301. Establishment of emergency telecommunications account. A 9-1-1 emergency telecommunications account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the account. After payment of refunds pursuant to

10-4-205, the balance of the account must be used for the purposes described in part 1 of this chapter. The distribution of the 9-1-1 emergency telecommunications account, according to the requirements of 10-4-302, is statutorily appropriated. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

History: En. Sec. 16, Ch. 635, L. 1985; amd. Sec. 2, Ch. 628, L. 1989.

Cross-References

Fund structure, 17-2-102.

10-4-302. Distribution of account by department. (1) The department shall make quarterly distributions of the entire account beginning on April 1, 1987. The distributions must be made for the following:

(a) administrative costs incurred during the preceding calendar quarter by the department of revenue in carrying out this chapter. The amount paid may not exceed 1% of the account on the date of distribution or actual expenses incurred, whichever is less.

(b) administrative costs incurred during the preceding calendar quarter by the department in carrying out its duties under this chapter. The department's annual recovery of costs may not exceed 7% of the amount collected by the account during the fiscal year or actual expenses incurred, whichever is less.

(c) costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(i) collection of the fee imposed by 10-4-201;

(ii) modification of central office switching and trunking equipment for emergency telephone service only; and

(iii) conversion of pay station telephones required by 10-4-121.

(2) Payments under subsection (1)(c) may be made only after application by the provider to the department for costs incurred in subsection (1)(c). The department shall review all applications relevant to subsection (1)(c) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid, the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account. A 9-1-1 jurisdiction whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by a 9-1-1 jurisdiction with an approved final plan the proportional amount for each city or county served by the 9-1-1 jurisdiction. The department shall provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(4) If the department through its monitoring process determines that a 9-1-1 jurisdiction is not adhering to an approved plan or is not using funds in the manner prescribed in 10-4-303, the department may, after notice and hearing, suspend payment to the 9-1-1 jurisdiction. The jurisdiction is not

eligible to receive funds until such time as the department determines that the jurisdiction is complying with the approved plan and fund usage limitations.

History: En. Sec. 17, Ch. 635, L. 1985; amd. Sec. 1, Ch. 153, L. 1991.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

10-4-303. Limitation on use of funds. Money received under subsection (3) of 10-4-302 may be used only to pay for installing, operating, and improving an emergency telephone system using 9-1-1. Money not necessary for immediate use may be invested by the city or county. The income from the investments shall be used only for the purposes described in this section.

History: En. Sec. 18, Ch. 635, L. 1985.

TITLES 11 AND 12

RESERVED

TITLE 13

ELECTIONS

Ch.
1. General Provisions.
2. Registration of Electors.
3. Precincts and Polling Places.
4. Election Judges.
Chapters 5 through 9 reserved.
10. Primary Elections and Nominations.
11. Election Proclamation. Repealed. Sec. 407, Ch. 571, L. 1979.
12. Election Supplies and Ballots.
13. Election Procedure.
14. Nonpartisan Elections.
15. Canvassing, Returns, and Certificates.
16. Recounts and Tie Votes.
17. Voting Machines.
18. Electronic Voting Systems. Repealed. Sec. 407, Ch. 571, L. 1979.
19. Mail Ballot Elections.
Chapters 20 and 21 reserved.
22. Youth Voting Act.
Chapters 23 and 24 reserved.
25. Elections for Federal Office.
26. Convention to Ratify Amendments to United States Constitution.
27. Ballot Issues.
Chapters 28 through 34 reserved.
35. Election and Campaign Practices and Criminal Provisions.
36. Contests.
37. Control of Campaign Practices.
38. Political Parties.

Title Cross-References

Right of suffrage, Art. II, sec. 13, Mont. Const.

Right of initiative and referendum, Art. III, sec. 4 through 7, Mont. Const.

Suffrage and elections, Art. IV, Mont. Const.

Secret ballot, Art. IV, sec. 1, Mont. Const.; 13-1-102.

Eligibility for public office, Art. IV, sec. 4, Mont. Const.

Election of executive officers, Art. VI, sec. 2, Mont. Const.

Public office — candidacy while holding other public office, Art. VI, sec. 5, Mont. Const.

Vacancy in executive branch office, Art. VI, sec. 6 and 14, Mont. Const.; Title 2, ch. 16, part 5.

Election of judicial officers, Art. VII, sec. 8, Mont. Const.

Local government initiative and referendum, Art. XI, sec. 8, Mont. Const.

Constitutional revision by initiative and referendum, Art. XIV, sec. 8, 9, Mont. Const.

General qualifications of public officers, 2-16-102.

Residence of public officers, 2-16-111.

Accession to office, Title 2, ch. 16, part 2.

Salaries of elected officials, Title 2, ch. 16, part 4.

Vacancy and succession of public officers, Title 2, ch. 16, part 5.

Montana Recall Act, Title 2, ch. 16, part 6.

Vacancy on Supreme or District Court, Title 3, ch. 1, part 10.

Election of Supreme Court Justices, Title 3, ch. 2, part 1.

Election of District Court Justices, Title 3, ch. 5, part 2.

Election of Municipal Court Judges, Title 3, ch. 6, part 2.

Election of Justices of the Peace, Title 3, ch. 10, part 2.

Districting and apportionment, Title 5, ch. 1, part 1.

Vacancy in House or Senate, Title 5, ch. 2, part 4.

Time of election of officers of reclassified municipality, 7-1-4116.

Election on question of creating new county, Title 7, ch. 2, part 22.

Election on question of locating permanent county seat, Title 7, ch. 2, part 23.

Election on change of name of county, Title 7, ch. 2, part 25.

Election on removal of county seat, Title 7, ch. 2, part 26.

Elections on abandonment and consolidation of counties, Title 7, ch. 2, part 27.

Election on question of organization of municipality, Title 7, ch. 2, part 41.

Annexation and exclusion, Title 7, ch. 2, parts 42 through 48.

Election on disincorporation, Title 7, ch. 2, part 49.

Election on alteration of form of local government, Title 7, ch. 3, part 1.

Election on consolidation of city-county government, Title 7, ch. 3, part 12.

Election on formation of commission form of municipal government, Title 7, ch. 3, part 42.

Election on formation of commission-manager form of municipal government, Title 7, ch. 3, part 43.

Vacancy in county office, 7-4-2106, 7-4-2206.

Election authorizing county to exceed maximum mill levy, Title 7, ch. 6, part 25.

Election authorizing municipality to exceed maximum mill levy, Title 7, ch. 6, part 44.

Challenges to local government bond elections, 7-7-105.

Election on question of issuance of county bonds, Title 7, ch. 7, part 22.

Election on question of county borrowing money, Title 7, ch. 7, part 24.

Election on question of issuance of municipal bonds, Title 7, ch. 7, part 42.

Election on question of creating county water and sewer districts, Title 7, ch. 13, part 22.

Election on question of creating municipal water and sewer systems, Title 7, ch. 13, part 43.

Election on question of creating urban transportation district, Title 7, ch. 14, part 2.

Election on question of creating county park district, Title 7, ch. 16, part 24.

Election on creation of rural fire districts, Title 7, ch. 33, part 21.

Election on question of creating hospital district, Title 7, ch. 34, part 21.

Election on question of creating cemetery district, Title 7, ch. 35, part 21.

Election of Superintendent of Public Instruction, Title 20, ch. 3, part 1.

Election of County Superintendent of Schools, Title 20, ch. 3, part 2.

Election of board of trustees of school district, Title 20, ch. 3, part 3.

Election on question of authorization of community college district, Title 20, ch. 15, part 2.

Election of trustees of community college district, Title 20, ch. 15, part 2.

Conduct of school elections, Title 20, ch. 20.

Election on question of creating a public library, Title 22, ch. 1, part 3.

Right to hold elected office, 49-1-202.

Rights and duties of electors as compared to nonelectors, 49-1-203.

Election of Public Service Commissioners, Title 69, ch. 1, part 1.

Election of supervisor of conservation district, Title 76, ch. 15, part 3.

Conduct of irrigation district elections, Title 85, ch. 7, part 17.

Election to create a conservancy district, Title 85, ch. 9, part 2.

Conduct of consevancy district elections, 85-9-422.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — General Provisions

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Part 1
General Provisions

13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(2) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination or appointment as a candidate for public office as required by law;

(b) for the purposes of chapters 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(3) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, as long as the organization is not a primary political committee; or

(iv) filing fees paid by the candidate.

(4) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(5) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(6) "Elector" means an individual qualified and registered to vote under state law.

(7) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (3);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, as long as the organization is not a primary political committee.

(8) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at

a regular election, regular election means an election held at the time provided in 13-1-104(1).

(9) "Individual" means a human being.

(10) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36, or 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral.

(11) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (2) of this section.

(12) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(13) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(14) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(15) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(16) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(17) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(18) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector.

History: Ap. p. Sec. 1, Ch. 368, L. 1969; amd. Sec. 1, Ch. 365, L. 1977; Sec. 23-2601, R.C.M. 1947; Ap. p. Sec. 2, Ch. 480, L. 1975; amd. Sec. 2, Ch. 365, L. 1977; Sec. 23-4777, R.C.M. 1947; R.C.M. 1947, 23-2601, 23-4777; amd. Sec. 1, Ch. 571, L. 1979; amd. Sec. 1, Ch. 603, L. 1983; amd. Sec. 31, Ch. 370, L. 1987; amd. Sec. 1, Ch. 339, L. 1989; amd. Sec. 1, Ch. 390, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 390 in definition of election, after "general", inserted "regular"; in definition of general election inserted "or "regular election"" as defined term and inserted last sentence defining regular election for ballot issues required by Article XIV, section 9, of the Montana Constitution;

and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Elections on initiatives and referenda, Art. III, sec. 6, Mont. Const.

Amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

"People" as a political body defined, 1-1-401.

Electors eligible to vote in election for fire district board of trustees, 7-33-2106.

Definition of "qualified elector" for conservation district elections, 76-15-103(9).

Elector requirement in election to create conservation district project area, 76-15-606.

13-1-102. Elections by secret ballot. All elections shall be by secret ballot.

History: En. Sec. 2, Ch. 368, L. 1969; amd. Sec. 1, Ch. 8, L. 1973; R.C.M. 1947, 23-2602.

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.

Secrecy required when aiding disabled elector, 13-13-119.

Voting machines to allow elector to vote in secrecy, 13-17-103.

Criminal provisions relating to secrecy, 13-35-201.

13-1-103. Determination of winner. The individual receiving the highest number of votes for any office at an election is elected or nominated to that office.

History: En. Sec. 3, Ch. 368, L. 1969; R.C.M. 1947, 23-2603; amd. Sec. 2, Ch. 571, L. 1979.

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

Secretary of State to certify names of persons receiving highest number of votes for offices commissioned by the Governor, 2-15-401.

13-1-104. Times for holding general elections. (1) A general election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, unless an earlier date is provided in a law authorizing a special election on an initiative or referendum pursuant to Article III, section 6, and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of such offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(2) A general election shall be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision, other than a municipality, required to hold elections annually shall be held on school election day, the first Tuesday of April of each year, and is subject to the election procedures provided for in 13-1-401.

(4) The general election for a municipality required to hold elections annually may be held either on school election day as provided in subsection

(3) or on the first Tuesday after the first Monday in November, at the discretion of the governing body.

History: En. Sec. 4, Ch. 368, L. 1969; R.C.M. 1947, 23-2604; amd. Sec. 4, Ch. 571, L. 1979; amd. Sec. 5, Ch. 27, L. 1981; amd. Sec. 2, Ch. 603, L. 1983; amd. Sec. 2, Ch. 216, L. 1987; amd. Sec. 1, Ch. 644, L. 1987.

Cross-References

Vote on initiative and referendum measures, Art. III, sec. 6, Mont. Const.

Constitutional amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

General election day legal holiday, 1-1-216.

Vacancies in Senate, 5-2-406, 5-2-407.

Election on question of creating new county, 7-2-2215.

Election on question of annexation by petition, 7-2-4602.

Election of City Judge, 7-3-1342, 7-3-4462.

Time for election of directors of county water and sewer districts, 7-13-2236.

Election of local port authority commissioners, 7-14-1106.

Vote on creation of municipal housing authority, 7-15-4408.

Election on tax levy for county parks, 7-16-2102.

Time for election of trustees of fire district, 7-33-2106.

Manner of conducting general elections for political subdivisions required to hold annual elections, 13-1-401.

Election day school holiday under certain circumstances, 20-1-305.

Election day as bank holiday, 32-1-481.

Time for election of commissioners of irrigation districts, 85-7-1702.

Time for election of commissioners of drainage districts, 85-8-302.

13-1-105. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 56, Ch. 368, L. 1969; R.C.M. 1947, 23-3301.

13-1-106. Time of opening and closing of polls for all elections — exceptions. (1) Polls must be open from 7 a.m. to 8 p.m., except polling places having fewer than 200 registered electors, which must be open from noon to 8 p.m. or until all registered electors in any precinct have voted, at which time the polls shall be closed immediately.

(2) When an election held under 13-1-104(3) and a school election are conducted in the same polling place, the polls shall be opened and closed at the times set for the school election, as provided in 20-20-106.

History: En. Sec. 5, Ch. 368, L. 1969; amd. Sec. 4, Ch. 365, L. 1977; R.C.M. 1947, 23-2605; amd. Sec. 5, Ch. 571, L. 1979; amd. Sec. 1, Ch. 676, L. 1983; amd. Sec. 1, Ch. 57, L. 1985.

13-1-107. Times for holding primary elections. (1) On the first Tuesday after the first Monday in June preceding the general election provided for in 13-1-104(1), a primary election shall be held throughout the state.

(2) On the Tuesday following the second Monday in September preceding the general election provided for in 13-1-104(2), a primary election, if required, shall be held throughout the state.

(3) If the general election for a municipality required to hold annual elections is held in November, as provided in 13-1-104(4), a primary election, if required, shall be held on the Tuesday following the second Monday in September. In an even-numbered year, the cost of this election must be paid by the municipality.

History: En. Sec. 3, Ch. 571, L. 1979; amd. Sec. 3, Ch. 216, L. 1987.

Cross-References

Election on question of creating new county, 7-2-2215.

Election on special additional mill levy — hospital districts, 7-34-2135.

Presidential preference primary to be held in conjunction with state primary, 13-10-401.

13-1-108. Notice of special elections. Notice of any special election shall be published at least once a week for the 3 successive weeks before the election on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held.

History: En. Sec. 6, Ch. 571, L. 1979.

Cross-References

Notice of recall election, 2-16-622, 2-16-631.

Notice of election on question of creating new county, 7-2-2215.

Notice of election on question of organization of new municipality, 7-2-4104, 7-2-4105.

Notice of election on question of annexation by petition, 7-2-4603.

Notice of election on question of disincorporation of municipality, 7-2-4903.

Notice of election on question of city-county consolidation, 7-3-1204.

Notice of election to elect members of commission of city-county government, 7-3-1208.

Notice of election on question of granting municipal franchise, 7-5-4322.

Notice of election on question of additional mill levy, 7-6-4434.

Notice of election on question of resort community tax, 7-6-4464.

Notice of election on question of issuance of county bonds, 7-7-2229.

Notice of election on question of issuance of municipal bonds, 7-7-4227.

Notice of election on question of creation of county water and sewer district, 7-13-2210.

Notice of election on question of incurring indebtedness for county water and sewer district, 7-13-2324.

Notice of irrigation district special election, 85-7-1712.

13-1-109. Election records open to public. Unless specifically provided otherwise, all records pertaining to elector registration and elections are public records. They shall be open for inspection during regular office hours.

History: En. Sec. 15, Ch. 571, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

13-1-110 reserved.

13-1-111. Qualifications of voter. (1) No person may be entitled to vote at elections unless he has the following qualifications:

(a) He must be registered as required by law.

(b) He must be 18 years of age or older.

(c) He must be a resident of the state of Montana and of the county in which he offers to vote for at least 30 days.

(d) He must be a citizen of the United States.

(2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

(3) No person adjudicated to be of unsound mind has the right to vote, unless he has been restored to capacity as provided by law.

History: En. Sec. 6, Ch. 368, L. 1969; amd. Sec. 1, Ch. 120, L. 1971; amd. Sec. 2, Ch. 158, L. 1971; amd. Sec. 1, Ch. 40, L. 1973; R.C.M. 1947, 23-2701.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Rules for determining residence generally, 1-1-215.

Electors as part of the political body, 1-1-401.

Elections on questions of municipal indebtedness — qualifications, 7-7-4103.

State residency not required to vote on question of creation of county water/sewer district, 7-13-2212.

Firefighters — qualifications for employment, 7-33-4107.

Registration generally, Title 13, ch. 2.

Challenges of voter qualifications prior to election, 13-2-404.

Change of residence to another county within 45 days of election, 13-2-514.

Qualification of elector in school elections, 20-20-301.

Definition of "felony", 45-2-101(21).

Effect of conviction, 46-18-801.

Right to hold elected office, 49-1-202.

Rights and duties of nonelector, 49-1-203.

Developmentally disabled individuals, Title 53, ch. 20.

Mentally ill individuals, Title 53, ch. 21.

Persons under disability, guardianship, and conservatorship, Title 72, ch. 5.

13-1-112. Rules for determining residence. For registration, voting, or seeking election to the legislature, the residence of any individual must be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any public prison; or solely as a result of residing on a military reservation.

(3) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state. An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 7, Ch. 571, L. 1979; amd. Sec. 1, Ch. 74, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 74 near beginning of introductory clause, after "voting", inserted "or seeking election to the legislature"; and made minor changes in style.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

Rules for determining residence generally, 1-1-215.

13-1-113. Only one residence. There can be only one residence.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 8, Ch. 571, L. 1979.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

13-1-114. Computation of elector's age and term of residence. An elector's age and the term of his residence must be computed by including the day of election.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(10); amd. Sec. 9, Ch. 571, L. 1979.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

13-1-115. Privilege from arrest. Electors are privileged from arrest during their attendance at elections and in going to and from voting places, except in cases of treason, felony, or breach of the peace.

History: En. Sec. 10, Ch. 368, L. 1969; R.C.M. 1947, 23-2705.

Cross-References

Privilege from arrest, Art. IV, sec. 6, Mont. Const.

Persons exempt from arrest, 46-6-102.

13-1-116 through 13-1-120 reserved.

13-1-121. Question of holding constitutional convention. Unless otherwise submitted earlier, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in 1990. The same question shall be submitted at the general election in each 20th year following its last submission, unless otherwise submitted earlier.

History: En. Sec. 1, Ch. 36, L. 1973; R.C.M. 1947, 23-4801.

Cross-References

Convention by call of Legislature, Art. XIV, sec. 1, Mont. Const.

Periodic submission of question of holding convention, Art. XIV, sec. 3, Mont. Const.

Call of convention, Art. XIV, sec. 4, Mont. Const.

Initiative for call of convention, 13-27-206.

13-1-122. Ballot form and content. The ballot submitting the question to the people shall contain the following:

Article XIV, sections 3 and 4, of the Montana constitution requires the question of holding an unlimited constitutional convention to be submitted to the people at the general election in each 20th year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session.

☐ FOR calling a constitutional convention

☐ AGAINST calling a constitutional convention

History: En. Sec. 2, Ch. 36, L. 1973; R.C.M. 1947, 23-4802; amd. Sec. 10, Ch. 571, L. 1979.

Cross-References

Periodic submission of question of holding convention, Art. XIV, sec. 3, Mont. Const.

Part 2
Role of Secretary of State

13-1-201. Chief election officer. The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in chapters 35, 36, or 37 of this title.

History: En. Sec. 11, Ch. 571, L. 1979.

Cross-References

Administration of elections — constitutional requirement, Art. IV, sec. 3, Mont. Const.

13-1-202. Forms and rules prescribed by chief election officer. (1) In carrying out his responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

(a) written directives and instructions relating to and based on the election laws;

(b) sample copies of prescribed and suggested forms; and

(c) advisory opinions on the effect of election laws other than those laws in chapters 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. He must seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

History: En. Sec. 12, Ch. 571, L. 1979.

13-1-203. Chief election officer to advise, assist, and train. The secretary of state shall advise and assist election administrators with regard to application, operation, and interpretation of Title 13, except for chapters 35, 36, or 37. He shall hold at least one workshop each year to provide training and assistance to election administrators. Election administrators shall be reimbursed, from funds appropriated to the secretary of state, for their mileage and expenses for attending the workshops at the rates set for mileage and expenses in 2-18-501 through 2-18-503. At the discretion of the secretary of state and within the budget limits allowed for workshops, such workshops may be held in several sessions at separate locations in the state.

History: En. Sec. 13, Ch. 571, L. 1979; amd. Sec. 32, Ch. 370, L. 1987.

13-1-204. Election records to be kept by secretary of state. (1) The secretary of state shall maintain current and accurate records including:

(a) a list of all precincts in each county;

(b) a map showing the boundaries of all precincts in each county;

(c) a count of the number of registered voters in each precinct for the latest general election;

(d) a list of legislative districts, judicial districts, and any multicounty election districts, showing the precinct numbers of each county contained in each district and the number of registered voters in each district for the latest general election;

(e) a count of votes cast at the latest general election by precinct and by legislative, judicial, and multicounty districts.

(2) Each election administrator shall provide the information and map for the record required in subsection (1) in the form and at the time prescribed by the secretary of state.

(3) The records required in subsection (1) and all records in the secretary of state's office pertaining to elections shall be open for public inspection during normal office hours.

History: En. Sec. 18, Ch. 571, L. 1979; amd. Sec. 1, Ch. 70, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Districting and apportionment, Title 5, ch. 1.

Election records open to public, 13-1-109.

Part 3
Local Election Administration

Part Cross-References

Administration of elections — constitutional requirement, Art. IV, sec. 3, Mont. Const.

Municipal elections — wards, 7-4-4401.

Election on creation of county park district, 7-16-2412.

Election on tax levy — search and rescue units, 7-32-235.

13-1-301. Election administrator. (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections and shall keep all records relating to elector registration and elections.

(3) The election administrator may appoint a deputy election administrator for each political subdivision required to hold annual elections under the provisions of 13-1-104(3). Each election administrator or deputy election administrator is responsible for the conduct of the annual elections of such political subdivision, as provided by 13-1-401.

History: En. Sec. 14, Ch. 571, L. 1979; amd. Sec. 6, Ch. 27, L. 1981.

Cross-References

Duties of County Clerk, 7-4-2611.

Definition of County Election Administrator, 13-1-101(5).

Request for County Election Administrator to conduct school election, 20-20-417.

13-1-302. Election costs. (1) Unless specifically provided otherwise, all costs of the regularly scheduled primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(2) A political subdivision holding an annual election with a regularly scheduled school election shall bear its proportionate share of the costs as determined by the county election administrator and the school district election administrator.

(3) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(4) Costs of elections may not include the services of the election administrator or capital expenditures.

(5) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(6) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

(7) The proportionate costs referred to in subsection (1) of this section shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election.

History: En. Sec. 16, Ch. 571, L. 1979; amd. Sec. 7, Ch. 27, L. 1981; amd. Sec. 1, Ch. 558, L. 1983; amd. Sec. 2, Ch. 644, L. 1987.

Cross-References

Expenses of Election Administrator, 13-2-117.

Expenses of recount in close election, 13-16-205.

Expenses of court-ordered recount, 13-16-307.

Expenses of printing paper ballots, 13-17-305.

13-1-303. Disposition of ballots and other election materials. (1) The voted ballots, detached stubs, unvoted ballots, and unused ballots from an election shall be kept in the unopened packages received from the election judges for a period of 12 months. Such packages may be opened only when an order for opening is given by the proper official for a recount procedure. After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may destroy the ballots without opening the packages.

(2) The secretary of state, in consultation with the state records committee, shall prepare a suggested plan for retention and destruction of all other election records. Each election administrator shall prepare a plan for retention and destruction of election records in the county and shall submit it to the secretary of state for approval. After approval of such a plan, records may be destroyed as provided in the plan.

History: En. Sec. 17, Ch. 571, L. 1979.

Cross-References

Recount procedures, Title 13, ch. 16.

13-1-304. Duties of officials when election not held. If a scheduled election is not necessary or is canceled for any reason, the governing body or official making the determination shall immediately notify the election administrator in writing. If the election is not necessary because of the number of candidates filed, the election administrator shall make the determination and notify the proper governing body.

History: En. Sec. 25, Ch. 571, L. 1979.

Cross-References

Registration lists not required when election not to be held, 13-2-115.

Precinct register not required when election not held, 13-2-116.

When primary election unnecessary, 13-10-209.

When nonpartisan primary election unnecessary, 13-14-115.

Part 4

Political Subdivision Elections

13-1-401. Manner of conducting general elections for political subdivisions required to hold annual elections. (1) Any political subdivision required to hold annual elections under 13-1-104(3) may cooperate with school districts having similar district boundaries to hold the election at the same location. The election administrator or deputy election administrator appointed under the provisions of 13-1-301 shall cooperate with the school district election administrator to share costs, as provided in 13-1-302.

(2) A political subdivision subject to 13-1-104(3) may, with the consent of the election administrator or deputy election administrator, conduct its annual election at an annual meeting of the political subdivision or at another convenient location within the political subdivision.

(3) A political subdivision election subject to 13-1-104(3) may be conducted by mail ballot as provided in Title 13, chapter 19.

(4) The election administrator or deputy election administrator conducting an election under the provisions of subsection (1), (2), or (3) shall give notice of the election not less than 20 days or more than 40 days before the day of the election by display advertisement at least two times in a newspaper of general circulation within the political subdivision. The election administrator or deputy election administrator may notify the public of the election by additional posting of notices or radio and television announcements.

History: En. Sec. 8, Ch. 27, L. 1981; amd. Sec. 29, Ch. 196, L. 1985.

Cross-References

Time for election of directors of county water and sewer districts, 7-13-2236.

Election of local port authority commissioners, 7-14-1106.

Time for election of trustees of fire district, 7-33-2106.

Procedure for election of trustees of hospital district, 7-34-2116 through 7-34-2118.

Payment of election costs, 13-1-302.

School elections, Title 20, ch. 20.

Procedure for election of commissioners of irrigation district, 85-7-1702, 85-7-1710.

Procedure for election of commissioners of drainage district, 85-8-302, 85-8-304, 85-8-306.

CHAPTER 2

REGISTRATION OF ELECTORS

Part 1 — Registrars

13-2-101. Repealed.
13-2-102. Repealed.
13-2-103 through 13-2-110 reserved.
13-2-111. Repealed.
13-2-112. Register of electors to be kept.
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13-2-114. Registration numbers to be assigned.
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13-2-201. Hours of registration.
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13-2-205. Procedure when prospective elector not qualified at time of registration.
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13-2-211. Elector in the United States service defined.
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13-2-214. Classification of federal post card application.
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Part 3 — Close of Registration

13-2-301. Close of registration — procedure.
13-2-302. Registration immediately before an election.
13-2-303. Repealed.

Part 4 — Cancellation and Challenge of Registration

13-2-401. Cancellation of registration for failure to vote — reregistration.
13-2-402. Other reasons for cancellation.
13-2-403. Challenge of registration.
13-2-404. Challenges prior to election.

Part 5 — Transfer of Registration

13-2-501. Renumbered 13-2-511 by Code Commissioner, 1979.
13-2-502. Renumbered 13-2-513 by Code Commissioner, 1979.
13-2-503. Renumbered 13-2-515 by Code Commissioner, 1979.
13-2-504 through 13-2-510 reserved.
13-2-511. Transferring registration or changing name.
13-2-512. Right to vote when precinct or name changed.
13-2-513. Procedure for transferring registration.
13-2-514. Change of residence to another county.
13-2-515. Inquiry as to previous registration — notices of changes.

Part 6 — Effect of Registration

13-2-601. Name on precinct register prima facie evidence of right to vote.
13-2-602. Joinder of parties in proceedings to compel entry of name in register.
13-2-603. Erroneous omission of name from precinct register.

Chapter Cross-References

Registration and voting by facsimile authorized, 13-13-277.

Part 1

Registrars

13-2-101. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 21, Ch. 368, L. 1969; amd. Sec. 8, Ch. 365, L. 1977; R.C.M. 1947, 23-3002(1), (2).

13-2-102. Repealed. Sec. 12, Ch. 390, L. 1993.

History: En. Sec. 22, Ch. 368, L. 1969; amd. Sec. 1, Ch. 340, L. 1973; amd. Sec. 1, Ch. 205, L. 1975; amd. Sec. 9, Ch. 365, L. 1977; R.C.M. 1947, 23-3003; amd. Sec. 19, Ch. 571, L. 1979; amd. Sec. 1, Ch. 146, L. 1983; amd. Sec. 1, Ch. 446, L. 1985; amd. Sec. 1, Ch. 298, L. 1987.

13-2-103 through 13-2-110 reserved.

13-2-111. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 21, Ch. 368, L. 1969; amd. Sec. 8, Ch. 365, L. 1977; R.C.M. 1947, 23-3002(3).

13-2-112. Register of electors to be kept. Each election administrator shall keep an official register of electors in the manner he considers most efficient. The original signed registration form for each elector shall be filed alphabetically in a separate file for each precinct. Additional files and records may be established for convenience. The information recorded in the official register of electors and the design of the registration forms shall be prescribed by the secretary of state.

History: En. Sec. 23, Ch. 368, L. 1969; R.C.M. 1947, 23-3004; amd. Sec. 20, Ch. 571, L. 1979.

13-2-113. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 243, L. 1971; R.C.M. 1947, 23-3004.1.

13-2-114. Registration numbers to be assigned. (1) The registration form for each elector shall be assigned a number by the election administrator, using a system of numbering that best accommodates the filing system and list preparation method used. The election administrator may adopt the use of the elector's social security number as the registration number. If social security numbers are used, they may not be printed on lists of registered voters or released as public information.

(2) If social security numbers are used as the registration number, the election administrator may assign an alternative number for any elector who does not have a social security number or who declines to provide the number. A system of assigning alternative numbers shall be developed in consultation with the secretary of state.

(3) Upon receipt by the election administrator of a properly completed registration card, the registration of the elector is complete and the election administrator shall assign a registration number.

History: En. Sec. 24, Ch. 368, L. 1969; amd. Sec. 1, Ch. 3, L. 1974; R.C.M. 1947, 23-3005(part); amd. Sec. 21, Ch. 571, L. 1979; amd. Sec. 1, Ch. 284, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Municipalities — petition signatures, 7-1-4133.

13-2-115. Registration lists to be prepared. (1) Immediately after registration is closed, the election administrator shall prepare and have printed lists of all registered electors in each precinct. Names of electors shall be listed alphabetically, with their residence address or mailing address if located where street numbers are not used. A preliminary list of registered electors may be printed before the close of registration for an election. If a preliminary list is printed, a supplementary list must be printed after the close of registration.

(2) A copy of the list of registered voters shall be displayed at the polling place. Extra copies of the lists shall be retained by the election administrator and furnished to an elector upon request.

(3) The list of registered electors prepared for a primary election may be used for the general election if a supplemental list giving the additions and deletions since the primary list was prepared is printed. The election administrator may prepare lists for a special election, but lists are not required to be printed for special elections.

(4) Lists of registered voters need not be printed if the election will not be held.

History: Ap. p. Sec. 31, Ch. 368, L. 1969; amd. Sec. 5, Ch. 158, L. 1971; amd. Sec. 12, Ch. 100, L. 1973; Sec. 23-3012, R.C.M. 1947; Ap. p. Sec. 42, Ch. 368, L. 1969; amd. Sec. 2, Ch. 243, L. 1971; amd. Sec. 1, Ch. 201, L. 1973; Sec. 23-3023, R.C.M. 1947; R.C.M. 1947, 23-3012(part), 23-3023; amd. Sec. 22, Ch. 571, L. 1979.

Cross-References

Registration lists exempt from prohibition against distribution or sale of lists of individuals, 2-6-109.

Registered elector competent to act as juror, 3-15-301.

Jury list selected from registered elector list, 3-15-402.

Close of registration, 13-2-301.

13-2-116. Precinct register. (1) Before each election, the election administrator shall prepare a precinct register for each precinct for use by the election judges. The register must contain an alphabetical list of the names, with addresses, of the registered electors, a space for the signature of the elector, and such other information as prescribed by the secretary of state.

(2) If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient.

(3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct.

(4) Precinct registers need not be printed if the election will not be held.

History: (1) thru (3)En. Sec. 43, Ch. 368, L. 1969; R.C.M. 1947, 23-3024; amd. Sec. 23, Ch. 571, L. 1979; (4)En. Sec. 25, Ch. 571, L. 1979.

13-2-117. County governing body to provide election administrator with sufficient help. The county governing body must provide the election administrator with sufficient help for the duties imposed by this title. The cost of stationery, printing, publishing, and posting is a proper charge against the county.

History: En. Sec. 45, Ch. 368, L. 1969; amd. Sec. 13, Ch. 365, L. 1977; R.C.M. 1947, 23-3026; amd. Sec. 24, Ch. 571, L. 1979.

Cross-References

Costs of elections generally, 13-1-302.

13-2-118 through 13-2-120 reserved.

13-2-121. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 46, Ch. 368, L. 1969; amd. Sec. 3, Ch. 243, L. 1971; R.C.M. 1947, 23-3027.

13-2-122. Charges for registers, elector lists, and mailing labels made available to public. Upon written request, the registrar shall furnish to any elector for noncommercial use a copy of the official precinct registers, a current list of registered electors, or mailing labels for registered electors. Upon delivery, the registrar may collect a charge not to exceed the actual cost of the register, list, or mailing labels.

History: En. Sec. 47, Ch. 368, L. 1969; R.C.M. 1947, 23-3028; amd. Sec. 1, Ch. 66, L. 1983.

Cross-References

Registration lists exempt from prohibition against distribution or sale of lists of individuals, 2-6-109.

Part 2
Registration Procedures

13-2-201. Hours of registration. The election administrator's office shall be open for registration of electors from 8 a.m. until 5 p.m. on all regular working days. The office may be kept open for the registration of electors at other times at the discretion of the election administrator.

History: En. Sec. 24, Ch. 368, L. 1969; amd. Sec. 1, Ch. 3, L. 1974; R.C.M. 1947, 23-3005(1); amd. Sec. 26, Ch. 571, L. 1979.

13-2-202. Registration by personal appearance. An elector may register by appearing before the registrar and completing and signing the registration form.

History: En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; R.C.M. 1947, 23-3006(1); amd. Sec. 27, Ch. 571, L. 1979; amd. Sec. 2, Ch. 298, L. 1987; amd. Sec. 2, Ch. 390, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 390 in first sentence, after "registrar", deleted "or a deputy registrar" and at end, after "and", substituted "completing and signing the registration form" for (1) and (2) that read: "(1) answering any questions asked by the official concerning items of information called for in the registration form;

(2) signing and verifying or affirming the affidavit or affidavits on the form"; and made minor changes in style. Amendment effective July 1, 1993.

13-2-203. Registration by mail. (1) A qualified individual may register by mailing, postage paid, a properly completed registration form to the election administrator in the county in which the individual resides.

(2) The election administrator shall send registration forms for mail registrations to all qualified individuals requesting them and shall, in addition, arrange for the forms to be widely and conveniently available within the county. The mail registration form must be designed as prescribed by the secretary of state. A form prescribed by the secretary of state explaining voter registration qualifications, deadlines, and purge information must be distributed with the mail registration form.

(3) The elector shall complete, sign, and return the mail registration form.

(4) The registration form must be received by the election administrator on or before the day of the close of registration and must be returned to the administrator no later than 15 days after the date it is signed.

(5) Registration forms properly executed before the close of registration must be accepted for 3 days after the close of registration.

History: En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; R.C.M. 1947, 23-3006(2) thru (6); amd. Sec. 28, Ch. 571, L. 1979; amd. Sec. 1, Ch. 396, L. 1985; amd. Sec. 2, Ch. 446, L. 1985; amd. Sec. 3, Ch. 390, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 390 in (3), after "sign, and", substituted "return the mail registration form" for "except as provided in 13-2-212, either verify or affirm the mail registration form before a notary public or other officer empowered to administer oaths or complete and sign the form and obtain the signature, address, and voting precinct of at least one registered voter in the county who shall witness the facts stated on the registration form"; at end of (4), after "signed", deleted "by the witness or officer before whom signed"; inserted (5) requiring registration forms properly executed before close of registration to be accepted for 3 days after close of registration; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Officers who may administer oaths, 1-6-101.

13-2-204. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 26, Ch. 368, L. 1969; R.C.M. 1947, 23-3007.

13-2-205. Procedure when prospective elector not qualified at time of registration. An individual who is not eligible to register because of residence or age requirements but who will be eligible on or before election day may register if it appears that he will become qualified to vote by election day.

History: En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(1); amd. Sec. 29, Ch. 571, L. 1979.

Cross-References

Qualifications of voter, 13-1-111.

U.S. citizenship required, 13-2-206.

13-2-206. Citizenship requirements. A person shall not be permitted to register until he attains United States citizenship.

History: En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(2).

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

13-2-207. Notice of registration. (1) The election administrator shall give or mail to each elector a notice, affirming registration and giving the location of the elector's polling place. Mailed notices must conform to postal regulations to ensure return, not forwarding, of undelivered notices.

(2) The election administrator must investigate the reason for the return of any mailed notices and correct the address on the registration form and mail a new notice or cancel the registration of the elector if a diligent effort fails to locate the elector named on the registration form.

History: En. Sec. 30, Ch. 571, L. 1979; amd. Sec. 3, Ch. 298, L. 1987.

13-2-208 through 13-2-210 reserved.

13-2-211. Elector in the United States service defined. "Elector in the United States service" means:

(1) a member of the armed forces in the active service and his spouse and dependents;

(2) a member of the merchant marine of the United States and his spouse and dependents;

(3) a member of a religious group or welfare agency assisting members of the armed forces of the United States, who is officially attached to and serving the armed forces, and his spouse and dependents;

(4) a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and his spouse and dependents when residing with or accompanying him.

History: En. Sec. 136, Ch. 368, L. 1969; amd. Sec. 1, Ch. 249, L. 1971; R.C.M. 1947, 23-3718.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-2-212. Registration of electors in the United States service. (1) An elector in the United States service who is absent from the state and the county of which he is a resident may register by mailing to the election administrator:

(a) the registration form, filled out and signed; or

(b) the federal post card application, filled out and signed.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state.

(3) An elector in the United States service who is absent from the state and county of which he is a resident may register to vote by federal post card application and vote by federal write-in absentee ballot for the next primary or general election up to noon on the day before the election.

History: (1)En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; Sec. 23-3006, R.C.M. 1947; (2)En. Sec. 137, Ch. 368, L. 1969; Sec. 23-3719, R.C.M. 1947; R.C.M. 1947, 23-3006(7), 23-3719(2); amd. Sec. 31, Ch. 571, L. 1979; amd. Sec. 2, Ch. 396, L. 1985; amd. Sec. 1, Ch. 302, L. 1991.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-2-213. Repealed. Sec. 5, Ch. 396, L. 1985.

History: En. Sec. 138, Ch. 368, L. 1969; amd. Sec. 1, Ch. 248, L. 1971; R.C.M. 1947, 23-3720; amd. Sec. 32, Ch. 571, L. 1979.

13-2-214. Classification of federal post card application. (1) Unless the elector is already registered, a federal post card application received from an elector in the United States service shall be treated as a simultaneous application for registration and for ballot for each primary and general election in which he is entitled to vote during the year of its receipt.

(2) Upon receipt by the election administrator of a federal post card application, properly filled out and signed, the election administrator shall:

(a) classify the application according to the precinct in which the elector resides or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct;

(b) immediately enter all information in the registration records of the office and either file the post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered;

(c) send to the applicant by the fastest mail service available a notice that he has been registered and informing him that a ballot is enclosed or that he will be mailed an absentee ballot for the next election in which he is entitled to vote under subsection (1).

(3) The election administrator may use photocopies of the post card application to complete all necessary records.

History: En. Sec. 139, Ch. 368, L. 1969; amd. Sec. 1, Ch. 250, L. 1971; R.C.M. 1947, 23-3721; amd. Sec. 33, Ch. 571, L. 1979; amd. Sec. 3, Ch. 396, L. 1985.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-2-215. Registration of electors whose United States service or employment has terminated. Electors in the United States service who have been honorably discharged from the armed forces of the United States or who have terminated their service or employment outside the territorial limits of the United States too late to register at the time when and place where registration is required shall be entitled to register for the purpose of voting at the next ensuing election after such discharge or termination of employment up to noon on the day before the election. Said elector shall execute a sworn affidavit qualifying him under this section to be filed in the office of his registration. The county registrar shall provide to the person registering under the provisions of this section a certificate stating the precinct in which he is entitled to vote. This certificate shall be presented to the election judges of that precinct at the time of voting.

History: En. 23-3724 by Sec. 1, Ch. 247, L. 1971; R.C.M. 1947, 23-3724.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

Part 3
Close of Registration

13-2-301. Close of registration — procedure. (1) The election administrator shall:

(a) close registrations for 30 days before any election, except as provided in 13-2-212(3); and

(b) publish a notice specifying the day registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county at least once a week for 3 weeks before the close of registration.

(2) Information to be included in the notice shall be prescribed by the secretary of state.

(3) An individual who submits a completed registration form to the election administrator before the deadline provided in subsection (1)(a) is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of registration, and thereafter the qualified elector is eligible to vote in the next election.

History: En. Sec. 35, Ch. 368, L. 1969; amd. Sec. 1, Ch. 385, L. 1971; R.C.M. 1947, 23-3016; amd. Sec. 34, Ch. 571, L. 1979; amd. Sec. 3, Ch. 446, L. 1985; amd. Sec. 2, Ch. 302, L. 1991.

Cross-References

Times for holding general elections, 13-1-104.

Times for holding primary elections, 13-1-107.

Filing of nominating petitions for supervisor of conservation district, 76-15-302.

13-2-302. Registration immediately before an election. An individual may register during the time when registration is closed preceding any election, and the election administrator shall keep his registration form in a separate file until it can be properly entered after the election.

History: En. Sec. 36, Ch. 368, L. 1969; R.C.M. 1947, 23-3017; amd. Sec. 35, Ch. 571, L. 1979.

13-2-303. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 9, Ch. 368, L. 1969; amd. Sec. 25, Ch. 342, L. 1977; amd. Sec. 5, Ch. 365, L. 1977; R.C.M. 1947, 23-2704.

Part 4

Cancellation and Challenge of Registration

13-2-401. Cancellation of registration for failure to vote — reregistration. (1) Except as provided in subsection (3), within 60 days after every general election in which a president is elected, the election administrator shall:

(a) cancel the registration of the electors who have not voted in each precinct, as shown by the official pollbook and precinct register of each precinct;

(b) mark the form of each elector whose registration has been canceled; and

(c) place canceled forms for the entire county in alphabetical order in the canceled file.

(2) An elector whose registration is canceled may reregister in the same manner as if he were registering for the first time.

(3) The registration of an elector who votes by absentee ballot but whose ballot does not arrive in time to be counted may not be canceled if his ballot is received and rejected by the election administrator within 10 days succeeding the election.

(4) A notice of cancellation shall be published on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county once a week for 2 weeks prior to the date of cancellation. The notice shall be run in a display advertisement (known as ROP in the trade) if in a newspaper or as an announcement if on radio or television and shall be in a form prescribed by the secretary of state. The names of those electors whose registration has been canceled need not be published.

History: En. Sec. 32, Ch. 368, L. 1969; amd. Sec. 1, Ch. 254, L. 1971; amd. Sec. 1, Ch. 215, L. 1973; amd. Sec. 1, Ch. 369, L. 1977; R.C.M. 1947, 23-3013; amd. Sec. 36, Ch. 571, L. 1979; amd. Sec. 4, Ch. 446, L. 1985.

13-2-402. Other reasons for cancellation. The election administrator shall cancel the registration of any elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of any elector is filed or if an elector is reported as deceased by the department of health and environmental sciences in the department's reports submitted to the county under 72-16-217;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of an elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) if an elector is successfully challenged and not allowed to vote at an election upon determination of an election judge; or

(7) if a notice is received from another county or state that the elector has registered in that county or state.

History: En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971; amd. Sec. 10, Ch. 365, L. 1977; R.C.M. 1947, 23-3014(1); amd. Sec. 37, Ch. 571, L. 1979; amd. Sec. 48, Ch. 575, L. 1981.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

Effect of conviction, 46-18-801.

13-2-403. Challenge of registration. (1) Forty-five or more days before the close of registration for an election, three registered electors of a precinct may challenge the registration of an elector by filing affidavits giving the name of the elector whose registration is challenged, the address at which he is registered, and a statement that the affiant has personal knowledge that the elector does not reside at the address where registered.

(2) No later than 3 days after the filing of affidavits as provided in subsection (1), the election administrator must send written notice to the elector whose registration is challenged, at the address shown on the registration form. The notice must state that registration will be canceled within 15 days of the filing of the affidavits unless the elector refutes the affidavits by submitting proof or a sworn statement that he resides at the address given on his registration form.

(3) The election administrator must cancel the registration of an elector whose registration is challenged under this section 15 days after the filing of the affidavits required in subsection (1) unless proof or a sworn statement as required in subsection (2) is received.

(4) If an elector proves or swears he resides at the address given on his registration form after his registration has been canceled as provided in this section, he may reregister by completing a new registration form. Such registration shall be effective for the next election even though the registration for that election is closed.

History: En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971; amd. Sec. 10, Ch. 365, L. 1977; R.C.M. 1947, 23-3014(2); amd. Sec. 38, Ch. 571, L. 1979.

Cross-References

Challenges on election day, 13-13-301.

13-2-404. Challenges prior to election. (1) If an elector believes another elector fails to meet the qualifications required in 13-1-111, he may challenge the right of that elector to vote any time not later than 20 days prior to an election. The challenge must:

(a) be filed with the election administrator and be signed by the elector;

(b) be verified by the affidavit of the elector that the elector designated is not entitled to vote;

(c) state the grounds of the challenge, objection, and disqualification.

(2) The election administrator shall:

(a) file the affidavit of challenge in his office;

(b) deliver a correct copy of the affidavit to the judges of election, together with the precinct register;

(c) write in the precinct register beside the name of any individual whose qualifications are challenged the words "to be challenged";

(d) notify the elector within 5 days by certified or registered mail that his qualifications as an elector have been challenged.

History: En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; R.C.M. 1947, 23-3015(1), (2); amd. Sec. 39, Ch. 571, L. 1979.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Challenges on election day, 13-13-301.

Vote by challenged elector, 13-13-311.

Challenges in school elections, 20-20-303.

Part 5

Transfer of Registration

13-2-501. Renumbered 13-2-511 by Code Commissioner, 1979.

13-2-502. Renumbered 13-2-513 by Code Commissioner, 1979.

13-2-503. Renumbered 13-2-515 by Code Commissioner, 1979.

13-2-504 through 13-2-510 reserved.

13-2-511. Transferring registration or changing name. An elector shall notify the election administrator of a change in residence within the county or a change in name by using a transfer form provided by the election administrator or by completing the changed information on a registration or mail registration form. The form must be signed and affirmed or verified as required on the form. If a registration or mail registration form is used, it must be clearly marked "for transfer of address" or "for change of name" in a space provided on the form for that purpose.

History: En. Sec. 28, Ch. 368, L. 1969; R.C.M. 1947, 23-3009; amd. Sec. 40, Ch. 571, L. 1979; Sec. 13-2-501, MCA 1979; redes. 13-2-511 by Code Commissioner, 1979.

13-2-512. Right to vote when precinct or name changed. (1) An elector who has changed his residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote in the precinct where he is registered at the first election at which he offers to vote after the change unless his registration has been canceled as provided in 13-2-207, 13-2-401, or 13-2-402.

(2) An elector still residing in the same precinct where registered whose name has changed and who has failed to notify the election administrator of the change by a new registration form may vote under his former name at the first election at which he offers to vote after the change unless his registration has been canceled as provided in 13-2-207, 13-2-401, or 13-2-402.

(3) The elector must state his correct residence address and name when offering to vote and must complete a transfer form or new registration form to make the necessary correction before being allowed to sign the precinct register and vote.

History: En. Sec. 41, Ch. 571, L. 1979.

13-2-513. Procedure for transferring registration. The election administrator shall make the necessary corrections in the registration records in his office when he receives a transfer form or corrected registration form if he is satisfied the form is valid. The original registration form may be fastened to the back of the new form, in which case the original and current forms must be retained, or the original registration form may be marked "canceled" and filed in a canceled file.

History: En. Sec. 29, Ch. 368, L. 1969; R.C.M. 1947, 23-3010; amd. Sec. 42, Ch. 571, L. 1979; Sec. 13-2-502, MCA 1979; redes. 13-2-513 by Code Commissioner, 1979.

13-2-514. Change of residence to another county. (1) An elector who changes his residence to a different county within this state must register in his new county of residence in order to vote in any election unless the change occurs less than 45 days before the election.

(2) An elector who changes his residence to a different county 45 days or less before an election may vote in person or by absentee ballot in the precinct and county where previously registered.

(3) The elector must state his correct name and residence address and date of residence change when offering to vote or when applying for an absentee ballot. The election administrator shall note the information on the elector's registration form if an absentee ballot application is received. The election judges shall note the change of address and date of residence change in the precinct register if the elector votes in person.

(4) The registration of an elector who votes under the provisions of subsection (2) of this section shall be canceled after the election.

History: En. Sec. 43, Ch. 571, L. 1979.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

13-2-515. Inquiry as to previous registration — notices of changes. (1) The election administrator shall check each new registration to ascertain whether the elector has listed previous registration in another county of this state or another state. If the elector has been previously registered, the election administrator shall enter his name on a notice or may photocopy the registration form.

(2) At least once a week and not more than 3 days after the close of registration, the election administrator shall forward the notices or photocopies for counties in this state to the election administrator of the county where the elector was previously registered. A list or other record shall be kept of notices or photocopies sent.

(3) Once a month and not more than 3 days after the close of registration, the election administrator shall forward the notices or photocopies for other states to the secretary of state or chief election official of the state where the elector was previously registered. A list or other record shall be kept of notices or photocopies sent.

History: En. Sec. 30, Ch. 368, L. 1969; R.C.M. 1947, 23-3011; amd. Sec. 44, Ch. 571, L. 1979; Sec. 13-2-503, MCA 1979; redes. 13-2-515 by Code Commissioner, 1979.

Part 6
Effect of Registration

13-2-601. Name on precinct register prima facie evidence of right to vote. (1) An elector may not vote at an election mentioned in this title unless his name appears on election day in the copy of the official precinct register furnished by the election administrator to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) The name of an elector who has been assigned to vote in a precinct other than the precinct in which he is registered, as provided in 13-3-213, must be printed on a special addendum to the precinct register in a form prescribed by the secretary of state. The fact that an elector's name appears on a special addendum to the precinct register is prima facie evidence of his right to vote in the precinct.

History: En. Sec. 37, Ch. 368, L. 1969; amd. Sec. 12, Ch. 365, L. 1977; R.C.M. 1947, 23-3018(1); amd. Sec. 45, Ch. 571, L. 1979; amd. Sec. 11, Ch. 200, L. 1987.

13-2-602. Joinder of parties in proceedings to compel entry of name in register. In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action may be joined as defendants.

History: En. Sec. 38, Ch. 368, L. 1969; R.C.M. 1947, 23-3019.

13-2-603. Erroneous omission of name from precinct register. (1) An elector whose name is erroneously omitted from a precinct register or other election register may secure from the election administrator a certificate of the error, stating the precinct in which he is entitled to vote, and present the certificate which will entitle him to vote to the election judges.

(2) The certificate shall be marked "voted" by the election judges and returned by them with the precinct register.

(3) If the elector's polling place is not located in the city where the election administrator's office is located, the elector may vote by signing an oath that his name was erroneously omitted if the election administrator can confirm such omission by telephone to the chief election judge of the precinct.

History: En. Sec. 39, Ch. 368, L. 1969; R.C.M. 1947, 23-3020; amd. Sec. 46, Ch. 571, L. 1979.

CHAPTER 3

PRECINCTS AND POLLING PLACES

Part 1 — Designation of Precincts and Polling Places

13-3-101. Establishment of election precincts.
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13-3-211. Emergency exemption.
13-3-212. Exemption if no accessible polling place is available.
13-3-213. Alternative means for casting ballot.

Chapter Cross-References

Number of qualified electors, Art. III, sec. 7, Mont. Const.

Legislative districting and apportionment, Art. V, sec. 14, Mont. Const.

Reapportionment Commission, Title 5, ch. 1, part 1.

Definitions applicable to this chapter, 13-1-101.

Part 1

Designation of Precincts and Polling Places

13-3-101. Establishment of election precincts. (1) The territorial unit for elections is the election precinct. All election precincts shall be designated by numbers, names, or both.

(2) The governing body of each county shall establish a convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(1), (2), (3)(b); amd. Sec. 47, Ch. 571, L. 1979.

13-3-102. Change of precinct boundaries. (1) The county governing body may change the boundaries of precincts, but not within 100 days before any primary or between a general election and the primary for that election. When the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of a districting and apportionment plan under Article V, section 14, of the 1972 Montana constitution or other district boundaries changed by the districting and apportionment plan, the changing of precinct boundaries must be accomplished within 45 days of the filing of the final plan.

(2) All changes must be certified to the election administrator 3 days or less after the change is made.

(3) The officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts, and other districts. The election administrator of counties involved in the plan shall be consulted before adoption of the final plan.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(3)(a), (4); amd. Sec. 48, Ch. 571, L. 1979.

13-3-103. Certification of boundary changes. (1) Not more than 10 days after an order of the governing body has established or changed the boundaries of an election precinct, the governing body shall cause to be prepared and delivered to the election administrator a written legal description and a map showing the borders of all precincts and districts in which elections are held within the county.

(2) Not more than 10 days after school district or other election district boundaries have been changed, the governing body making the change shall certify any changes or alterations in the boundaries to the election administrator and deliver a written legal description and a map showing boundaries of the wards, school districts, or other election districts. The map must be sufficiently detailed to clearly identify the wards or districts and the territory included in each.

History: (1)En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; Sec. 23-3101, R.C.M. 1947; (2)En. Sec. 19, Ch. 368, L. 1969; Sec. 23-3102, R.C.M. 1947; R.C.M. 1947, 23-3101(3)(c), 23-3102; amd. Sec. 49, Ch. 571, L. 1979.

Cross-References

Districting and apportionment, Title 5, ch. 1.

13-3-104. Precincts, wards, and election districts. (1) A ward or election district may be divided into two or more precincts, and a precinct may be divided into two or more polling places.

(2) Precincts may include two or more adjoining wards or election districts, together with contiguous territory lying outside the municipality or district, if provision can be made for clearly identifying the electors eligible to vote in each ward or district.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(5), (6); amd. Sec. 50, Ch. 571, L. 1979.

13-3-105. Designation of polling place. (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place shall be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county, a statement of the locations of the precinct polling places. The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice shall be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any publicly owned building may be used as a polling place. Such building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

History: En. Sec. 20, Ch. 368, L. 1969; amd. Sec. 1, Ch. 169, L. 1974; R.C.M. 1947, 23-3103; amd. Sec. 51, Ch. 571, L. 1979; amd. Sec. 1, Ch. 562, L. 1981; amd. Sec. 12, Ch. 200, L. 1987.

Cross-References

Election on questions of municipal indebtedness — polling places, 7-7-4103.

Part 2
Accessibility of Polling Places

13-3-201. Purpose. The purpose of this part is to promote the fundamental right to vote by improving access for handicapped and elderly individuals to polling places. The provisions of this part acknowledge that, in certain cases, it may not be possible to locate a polling place that meets the standards for accessibility, either because no accessible polling place exists or, if it does, its location in the precinct would require undue travel for a majority of the electors. In those cases when an accessible polling place is not available, this part provides handicapped and elderly voters an alternative means for casting a ballot on election day.

History: **En. Sec. 1, Ch. 200, L. 1987.**

13-3-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Accessible" means accessible to handicapped and elderly individuals for purposes of voting as determined in accordance with standards established by the secretary of state under 13-3-205.

(2) "Elderly" means 65 years of age or older.

(3) "Election" means a general, special, or primary election held in an even-numbered year, as provided for in 13-1-104(1) and 13-1-107(1).

(4) "Handicapped" means having a temporary or permanent physical impairment such as:

(a) impaired vision;

(b) impaired hearing; or

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired due to age, disability, or disease.

History: **En. Sec. 2, Ch. 200, L. 1987.**

13-3-203. Duty of secretary of state — rulemaking. (1) Except as provided in 13-3-204, the secretary of state shall assure that all polling places are accessible to handicapped and elderly electors on election day.

(2) The secretary of state shall adopt rules to establish standards that a polling place must meet in order to be designated accessible under this part.

(3) The secretary of state may adopt any other rules necessary for implementation of this part.

History: **En. Sec. 3, Ch. 200, L. 1987.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

13-3-204. Exceptions. Section 13-3-203 does not apply to a polling place that:

(1) is a rural polling place as defined in 13-3-207;

(2) has been granted an emergency exemption as provided in 13-3-211; or

(3) is declared exempt under 13-3-212 because no accessible polling place is available.

History: En. Sec. 4, Ch. 200, L. 1987.

13-3-205. Adoption of standards for polling place accessibility — rulemaking authority. The secretary of state, with advice from election administrators and handicapped and elderly individuals, shall establish standards for accessibility of polling places. The standards, whenever possible, must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards.

History: En. Sec. 5, Ch. 200, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

13-3-206. Survey of polling places to determine accessibility — procedures. (1) Except as provided in 13-3-207 and 13-3-211, the election administrator in each county shall conduct an onsite survey of each polling place used in an election to determine whether such polling place meets the standards for accessibility established under 13-3-205.

(2) Each election administrator shall conduct the survey in a manner that represents the path of travel an elector would reasonably be expected to take in order to reach the polling place on election day.

(3) A polling place that has been surveyed and designated as accessible need not be surveyed again so long as the conditions of accessibility remain unchanged.

History: En. Sec. 6, Ch. 200, L. 1987.

13-3-207. Polling place classifications. (1) As a result of the survey provided in 13-3-206, each polling place must be classified as:

(a) accessible;

(b) inaccessible;

(c) technically inaccessible but usable; or

(d) rural.

(2) An accessible polling place is one that meets the standards for accessibility established by the secretary of state under 13-3-205.

(3) An inaccessible polling place is one that does not meet the standards for accessibility and cannot be made accessible through safe, practical, and cost-effective methods.

(4) A technically inaccessible but usable polling place is one that does not meet all the standards for accessibility but has been surveyed, evaluated, and certified as being adequate for use as a polling place. Such certification is cause for the secretary of state to grant the polling place an exemption from the standards for accessibility. However, in a future election, the secretary of state may issue an objection to the criteria used for determining that the facility is usable as a polling place.

(5) A rural polling place is one that serves less than 200 registered electors and is:

(a) granted an exemption from the standards for accessibility established under 13-3-205; and

(b) subject to review and redesignation 45 days prior to an election.

(6) A rural designation may not be construed as cause for denying handicapped or elderly electors at a polling place the right to choose an alternative means for casting a ballot on election day as provided in 13-3-213.

History: **En. Sec. 7, Ch. 200, L. 1987.**

13-3-208 through 13-3-210 reserved.

13-3-211. Emergency exemption. (1) The secretary of state shall exempt a polling place from the requirements of this part if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.

(2) If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in 13-3-105. The new polling place must be considered temporary and must be exempt from the survey procedures established under 13-3-206. However, such polling place may not be used in a subsequent election unless it is surveyed as required in 13-3-206.

History: **En. Sec. 8, Ch. 200, L. 1987.**

13-3-212. Exemption if no accessible polling place is available. (1) If an existing polling place has been surveyed and designated as being inaccessible, the election administrator shall make a reasonable effort to locate and survey all potential sites with comparable utility as a polling place.

(2) The election administrator shall request in writing to the secretary of state that an inaccessible polling place be exempt from the standards for accessibility if:

(a) all potential polling places have been surveyed and it is determined that no accessible polling place is available; and

(b) the county cannot safely or reasonably make a polling place temporarily accessible in the area involved.

(3) Nothing in this section may require an election administrator to select an accessible facility as a polling place if its location requires excessive travel or imposes other hardships for the majority of qualified electors in the precinct.

History: **En. Sec. 9, Ch. 200, L. 1987.**

13-3-213. Alternative means for casting ballot. (1) The election administrator shall provide handicapped and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

(a) delivery of a ballot to the elector as provided in 13-13-118;

(b) voting by absentee ballot as provided in 13-13-222; and

(c) prearranged assignment to an accessible polling place within the county.

(2) Any handicapped or elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

(a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;

(b) must be assigned to the nearest accessible polling place or technically inaccessible polling place for the purpose of voting in the election;

(c) shall sign his name on a special addendum to the official precinct register as required in 13-2-601; and

(d) shall receive the same ballot to which he is otherwise entitled.

(3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot.

History: En. Sec. 10, Ch. 200, L. 1987.

CHAPTER 4

ELECTION JUDGES

Part 1 — Appointment

13-4-101. Appointment of election judges — other boards of election judges.
13-4-102. Manner of choosing election judges.
13-4-103. Judges to serve until others appointed.
13-4-104. Election administrator to notify judges.
13-4-105. Oath of judges.
13-4-106. Compensation of judges.
13-4-107. Qualifications of election judges.

Part 2 — Functions

13-4-201. Duties of chief election judge.
13-4-202. Administration of oaths.
13-4-203. Instruction of judges — training materials.
13-4-204. Repealed.
13-4-205. Repealed.
13-4-206. Repealed.
13-4-207. Judges to remain at polls — emergency provisions — part-time service.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Criminal provisions relating to conduct of election officials and judges, 13-35-202.

Part 1

Appointment

13-4-101. Appointment of election judges — other boards of election judges. (1) At least 30 days before the primary election in even-numbered years, the county governing body shall appoint 3 or more election judges for each precinct, one of whom shall be designated chief judge.

(2) A board of election judges, designated as a counting board, may be appointed in any precinct if recommended by the election administrator.

(3) A board of election judges, designated as a counting board for absentee ballots, may be appointed to count all absentee ballots for all precincts if recommended by the election administrator.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(part); amd. Sec. 52, Ch. 571, L. 1979; amd. Sec. 1, Ch. 120, L. 1983.

Cross-References

Time for primary elections, 13-1-107.

Procedure for electors absent from polling place, Title 13, ch. 13, part 2.

Duties of Counting Board, 13-15-103.

13-4-102. Manner of choosing election judges. (1) Election judges shall be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges shall be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges shall contain judges representing all parties that have submitted lists as provided in subsection (1). No more than a majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list, the governing body shall, insofar as possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list, the election administrator may randomly select, either by manual drawing or by computer, sufficient qualified registered electors in the county to fill election judge vacancies in all precincts.

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as assigned by the election administrator for 2 years.

History: En. Sec. 50, Ch. 368, L. 1969; amd. Sec. 2, Ch. 258, L. 1971; amd. Sec. 1, Ch. 125, L. 1973; R.C.M. 1947, 23-3202; amd. Sec. 54, Ch. 571, L. 1979; amd. Sec. 1, Ch. 232, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 232 in (4), in second sentence after "insufficient", deleted "any qualified registered elector from the county may be appointed" and inserted remainder of subsection providing that if one or more eligible political parties fails to submit a list, the qualified registered electors selected to fill vacancies may be selected by a random method, either by manual drawing or by computer; and inserted (5) requiring notification of potential judges and requiring them to attend a training class and to serve for 2 years.

Cross-References

Registration lists, 13-2-115.

Political parties eligible to nominate candidates in primary election, 13-10-601.

13-4-103. Judges to serve until others appointed. The election judges continue to be judges of all elections held in their precincts until other judges are appointed.

History: En. Sec. 51, Ch. 368, L. 1969; amd. Sec. 3, Ch. 258, L. 1971; R.C.M. 1947, 23-3203; amd. Sec. 55, Ch. 571, L. 1979.

13-4-104. Election administrator to notify judges. The election administrator must notify the judges of their appointment and of the time set for instruction sessions.

History: En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(1); amd. Sec. 56, Ch. 571, L. 1979.

Cross-References

Notification to county political party chairmen, 13-4-203.

13-4-105. Oath of judges. Before beginning service on each election day, the election judges must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

History: En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(1); amd. Sec. 57, Ch. 571, L. 1979; amd. Sec. 2, Ch. 232, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 232 at beginning substituted "Before beginning service on each election day" for "Before votes are cast".

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

13-4-106. Compensation of judges. (1) Except as provided in subsection (2), election judges shall be paid at the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter.

(2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for such certification are received.

History: En. Sec. 55, Ch. 368, L. 1969; R.C.M. 1947, 23-3207; amd. Sec. 58, Ch. 571, L. 1979; amd. Sec. 7, Ch. 591, L. 1991.

Cross-References

Mileage and expenses, Title 2, ch. 18, part 5.

13-4-107. Qualifications of election judges. (1) Election judges shall be registered electors of the county and of the precinct in which they serve, except as provided in 13-4-102(4).

(2) No election judge may be a candidate or a spouse, ascendent, descendant, brother, or sister of a candidate or a candidate's spouse or the spouse of any of these in an election precinct where the candidate's name appears on the ballot. However, this does not apply to candidates for precinct offices.

History: En. Sec. 53, Ch. 571, L. 1979.

Part 2

Functions

13-4-201. Duties of chief election judge. The chief election judge shall be responsible for the conduct of the proceedings in the polling place, shall assign duties to other members of the board of election judges, and, if assigned to work through the close of the polls, shall be responsible for the return of or for arranging the return of all ballots and election supplies to the election administrator.

History: En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(2), (3); amd. Sec. 59, Ch. 571, L. 1979; amd. Sec. 3, Ch. 232, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 232 before "shall be responsible for the return" inserted "if assigned to work through the close of the polls" and after "shall be responsible for the return" inserted "of or for arranging the return".

13-4-202. Administration of oaths. Any election judge may administer and certify oaths required during an election.

History: **En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(2); amd. Sec. 60, Ch. 571, L. 1979.**

13-4-203. Instruction of judges — training materials. (1) Before each election, all election judges who do not possess a current certificate of instruction shall be instructed by the election administrator. In precincts where voting machines or devices are used, instructions shall cover both machines or devices and paper ballots.

(2) Chief judges may be required to attend the training session before each election, as well as a special session that may be held for chief judges only.

(3) Any individual willing to be appointed an election judge may attend an instruction session by registering with the election administrator. Such individuals may not be paid for attendance unless they are appointed election judges.

(4) The secretary of state shall prepare and distribute training materials for election judges. The materials shall include instructions on the use of all machines or devices approved for use in this state, as well as paper ballots. Enough copies of the materials to supply all election judges in the county and provide a small extra supply shall be sent to each election administrator. The secretary of state shall hold at least one workshop every 2 years to instruct election administrators and their staffs in use of the materials. Workshops may be held in various locations around the state. Costs of the materials and workshops shall be paid by the secretary of state.

(5) Each election judge completing a training session shall be given a certificate of completion. No individual may serve as an election judge without a valid certificate. However, this does not apply to individuals filling vacancies in emergencies.

(6) All certificates of completion expire 30 days before the primary election in even-numbered years.

(7) Notice of place and time of instruction must be given by the election administrator to the county chairmen of the political parties.

History: **En. Sec. 54, Ch. 368, L. 1969; amd. Sec. 5, Ch. 258, L. 1971; R.C.M. 1947, 23-3206; amd. Sec. 61, Ch. 571, L. 1979.**

Cross-References

Notification to judges, 13-4-104.

13-4-204. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(part).**

13-4-205. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(3).**

13-4-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(4).**

13-4-207. Judges to remain at polls — emergency provisions — part-time service. (1) Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.

(2) A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

(3) The time of departure and reason for leaving shall be entered near the oath form subscribed by the election judge or on a form provided by the election administrator. The chief election judge shall sign the entry.

(4) The election administrator may appoint a judge to replace an excused judge.

(5) The election administrator may assign a judge or chief election judge to work less than a full polling day, but at least three judges, including a chief election judge, must be on duty during the time that the polls are open.

History: En. Sec. 62, Ch. 571, L. 1979; amd. Sec. 4, Ch. 232, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 232 inserted (5) allowing a judge to work less than a full polling day and requiring at least 3 judges, including a chief judge, to be on duty while polls are open.

Cross-References

Voting of election judges by absentee ballot, 13-13-201.

CHAPTERS 5 THROUGH 9

RESERVED

CHAPTER 10

PRIMARY ELECTIONS AND NOMINATIONS

Part 1 — General Provisions (Repealed)

13-10-101. Repealed.
13-10-102. Repealed.

Part 2 — Preprimary Procedures

13-10-201. Declaration for nomination.
13-10-202. Filing fees.
13-10-203. Indigent candidates.
13-10-204. Write-in nominations.
13-10-205. Register of candidates.
13-10-206. Repealed.
13-10-207. Repealed.
13-10-208. Certificate of primary ballot — printing ballot.
13-10-209. Arrangement of ballots.
13-10-210. Repealed.
13-10-211. Declaration of intent for write-in candidates.

Part 3 — Primary Election Procedure

13-10-301. Casting of ballot.
13-10-302. Write-in votes for previously nominated candidates.
13-10-303. Nominations by more than one party.

13-10-304. Repealed.
13-10-305. Independent forfeits place on ballot.
13-10-306 through 13-10-310 reserved.
13-10-311. Election judges' duties upon closing of polls.
13-10-312 through 13-10-321. Repealed.
13-10-322 through 13-10-324 reserved.
13-10-325. Withdrawal from nomination.
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13-10-327. Vacancy after primary and prior to general election.
13-10-328. Vacancy in governor or lieutenant governor candidacy.

Part 4 — Presidential Preference Primary

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13-10-402. Ballot.
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13-10-501. Petition for nomination by independent candidates or political parties not eligible to participate in primary election.
13-10-502. Signature requirements for petition.
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13-10-504. Independent or minor party candidates for president or vice president.
13-10-505. Applicability.
13-10-506. Repealed.
13-10-507. Independent candidates — association with political parties not allowed.

Part 6 — Nominations by Political Parties

13-10-601. Parties eligible for primary election — petitions by minor parties.
13-10-602. Use of party name.
13-10-603. Repealed.
13-10-604. Nominations for minor parties.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Times for holding primary elections, 13-1-107.

Criminal provisions relating to primary elections and nominations, Title 13, ch. 35.

Part 1

General Provisions (Repealed)

13-10-101. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 58, Ch. 368, L. 1969; R.C.M. 1947, 23-3303.

13-10-102. Repealed. Sec. 11, Ch. 52, L. 1993.

History: En. Sec. 1, Ch. 2, Sp. L. January 1992.

Part 2

Preprimary Procedures

13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of state or election administrator. Each candidate for governor shall send a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for a congressional office, state or district office to be voted for in more than one county, member of the legislature, or judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures if sent by mail or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

History: (1) thru (5)En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; Sec. 23-3304, R.C.M. 1947; (6)En. Sec. 60, Ch. 368, L. 1969; amd. Sec. 15, Ch. 365, L. 1977; Sec. 23-3305, R.C.M. 1947; R.C.M. 1947, 23-3304(1) thru (4), (8), 23-3305; amd. Sec. 63, Ch. 571, L. 1979; amd. Sec. 25, Ch. 250, L. 1985; amd. Sec. 3, Ch. 644, L. 1987; amd. Sec. 2, Ch. 74, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 74 inserted (5)(b) regarding residency of person seeking nomination to the Legislature; and made minor changes in style.

Cross-References

Joint filing of Governor and Lieutenant Governor, Art. VI, sec. 2, Mont. Const.

Forfeiture of judicial position on filing for nonjudicial elective office, Art. VII, sec. 10, Mont. Const.

General qualifications of persons seeking election to public office, 2-16-102.

Resignation of judge required prior to becoming candidate for another public office, 3-1-607, 3-1-608.

Election Administrator, 13-1-301.

Petition for nomination in presidential preference primary, 13-10-405.

Declaration of nomination in nonpartisan election, 13-14-112, 13-14-113.

Criminal provisions relating to declaration of nomination, 13-35-205 through 13-35-207, 13-35-221.

13-10-202. Filing fees. Filing fees are as follows:

(1) for offices having an annual salary of $2,500 or less and candidates for the legislature, $15;

(2) for county offices having an annual salary of more than $2,500, 0.5% of the total annual salary;

(3) for other offices having an annual salary of more than $2,500, 1% of the total annual salary;

(4) for offices in which compensation is paid in fees, $10;

(5) for officers of political parties, presidential electors, and officers who receive no salary or fees, no filing fee is required.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(5); amd. Sec. 64, Ch. 571, L. 1979.

Cross-References

Salaries of certain elected state officials, 2-16-405.

Salaries of certain county officers, 7-4-2503.

Filing fees not to be refunded if candidate withdraws, 13-10-325.

No fee for filing presidential preference primary petition, 13-10-405.

13-10-203. Indigent candidates. If an individual is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(1) from a successful write-in candidate, a verified statement that he is unable to pay the filing fee;

(2) from a candidate for nomination, a verified statement that he is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(a) contains the name of the office to be filled and the candidate's name and residence address;

(b) contains signatures numbering 5% or more of the total vote cast for the successful candidate for the same office at the last general election;

(c) the signatures are those of electors residing within the political subdivision of the state in which the candidate petitions for nomination; and

(d) the signatures have been certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(7); amd. Sec. 65, Ch. 571, L. 1979.

Cross-References

Equal protection of the laws, Art. II, sec. 4, Mont. Const.

13-10-204. Write-in nominations. An individual nominated by having his name written in on the primary ballot and desiring to accept the nomination may not have his name printed on the general election ballot unless he:

(1) files with the secretary of state or election administrator no later than 10 days after the official canvass, a written declaration indicating his acceptance of the nomination;

(2) pays the required filing fee or, if indigent, complies with 13-10-203;

(3) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election; and

(4) complies with the provisions of 13-37-126.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(6); amd. Sec. 66, Ch. 571, L. 1979.

Cross-References

Write-in votes for previously nominated candidates, 13-10-302.

Acceptance of write-in nomination by independent candidate, 13-10-305.

Declaration or certification withheld for failure to file acceptance, 13-15-405, 13-15-507.

13-10-205. Register of candidates. The secretary of state and the election administrator may each keep a register of candidates who file with their respective offices. The register shall provide a complete record of the requisite information pertaining to all candidates in the primary and general election. Information on ballot issues may also be included in the register. The secretary of state may prepare and distribute a recommended format for the register.

History: En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(1), (2); amd. Sec. 67, Ch. 571, L. 1979; amd. Sec. 1, Ch. 99, L. 1987.

13-10-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(3).

13-10-207. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(4).

13-10-208. Certificate of primary ballot — printing ballot. (1) Not more than 75 days and not less than 67 days before the date of the primary election, the secretary of state shall certify to the election administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of the secretary of state's office in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(2) Not more than 67 days and not less than 62 days before the date of the primary election, the election administrator shall certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of the election administrator's office and have the official ballots printed in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325.

History: En. Sec. 62, Ch. 368, L. 1969; R.C.M. 1947, 23-3307; amd. Sec. 68, Ch. 571, L. 1979; amd. Sec. 26, Ch. 250, L. 1985; amd. Sec. 3, Ch. 74, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 74 inserted (3) regarding notification of legislative candidate who is required to withdraw from candidacy because of residency change; and made minor changes in style.

Cross-References

Vacancy prior to primary election, 13-10-326.

Other election ballots, 13-12-201.

13-10-209. Arrangement of ballots. (1) (a) Ballots for a primary election shall be arranged and printed in the same manner and number as provided in chapter 12 for general election ballots, except there shall be separate ballots for each political party entitled to participate. The name of the political party shall be printed at the top of the separate ballot for that party and need not be printed opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be printed on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate; and

(ii) such nonpartisan offices and ballot issues appear on each party's ballot.

(2) It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the offices on the ballot in even-year elections if no more than one candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify or instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(3) The separate ballots for each party shall be the same size and color. The stubs of each set of party ballots shall bear the same number. If printed as a separate ballot, the nonpartisan ballot shall be a different size or color than the party ballots, but the stubs shall be numbered in the same order as the party ballots.

(4) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may be a different size and color than the other ballots in the election, but the stubs shall be numbered in the same order.

(5) Each elector shall receive a set of party ballots and a nonpartisan and a ballot issue ballot if such ballots are printed.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(1), (2), (7); amd. Sec. 69, Ch. 571, L. 1979; amd. Sec. 5, Ch. 298, L. 1987.

Cross-References

Duties of officials when election not held, 13-1-304.

Arrangement of ballots in other elections, 13-12-203.

13-10-210. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 64, Ch. 368, L. 1969; R.C.M. 1947, 23-3309.

13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (4), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsection (2), the declaration must be filed no later than 5 p.m. on the 15th day before the election and contain:

(a) the candidate's name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, less than 15 days before the election, a candidate for the office that the write-in candidate is seeking:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with his office. Each election administrator and school district clerk shall notify the election judges in their county or district of the names of write-in candidates who have filed a declaration of intent.

(4) The requirements in subsection (1) do not apply to a write-in candidate seeking election:

(a) as a precinct committeeman or committeewoman in a primary election; or

(b) to an office for which no candidate has filed a declaration or petition for nomination or a declaration of intent.

History: En. Sec. 1, Ch. 391, L. 1989.

Cross-References

Counting of write-in votes, 13-15-202.

Part 3

Primary Election Procedure

13-10-301. Casting of ballot. (1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures shall be at the same times and in the same manner as provided for in the laws for the general election.

(2) At a primary election, the elector shall mark only one of the set of party ballots. After marking any other ballots received other than the party ballots, the elector shall fold the marked and unmarked ballots separately in a manner so that the marks cannot be seen, the official stamp is visible on each ballot, and all stubs can be detached by an election judge.

(3) The elector shall hand the marked and unmarked ballots separately to the election judge, identifying them as marked and unmarked. If the judge determines the ballots may be voted, he shall, in the presence of the elector:

(a) remove the stubs from all the ballots;

(b) deposit the unmarked ballot or ballots and all the stubs in the stub and unmarked ballot box;

(c) and deposit the marked ballots in the voted ballot box.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(8), (9); amd. Sec. 70, Ch. 571, L. 1979.

Cross-References

General election procedures, Title 13, ch. 13.

13-10-302. Write-in votes for previously nominated candidates. If an elector writes the name of an individual upon a primary party ballot when the individual's name appears as a candidate for the same office on another party ballot, the vote shall count for the individual only as a candidate of the party upon whose ballot his name is written and the votes cast on the separate party ballots may not be added together.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(3); amd. Sec. 71, Ch. 571, L. 1979.

13-10-303. Nominations by more than one party. If an individual is nominated by more than one party, he shall, not later than 10 days after the election, file written notification with the secretary of state or election administrator indicating the party under which his name is to appear upon the ballot for the general election. If he fails to notify the proper officers, his name shall appear under the party with whom his declaration for nomination was filed if a declaration was filed. If an individual did not file a declaration or acceptance of nomination and fails to notify the proper officers, his name shall be printed on the ballot without a party designation.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(4); amd. Sec. 72, Ch. 571, L. 1979.

Cross-References

Printing of candidate's name and party designation, 13-12-203.

13-10-304. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(5).

13-10-305. Independent forfeits place on ballot. An individual who has filed as an independent candidate forfeits his place on the general election ballot as an independent candidate if he accepts a write-in nomination for an office as provided in 13-10-204.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(6); amd. Sec. 73, Ch. 571, L. 1979.

13-10-306 through 13-10-310 reserved.

13-10-311. Election judges' duties upon closing of polls. (1) The election judges at the primary election shall separate the ballots for each political party and count each party's ballots separately.

(2) They shall reconcile the total number of party ballots and the separate total number of other ballots used at the election with the number of electors voting. Any discrepancies in the reconciliations shall be handled as provided in 13-15-201(3).

(3) Each party's candidates shall be listed separately in the tally books.

(4) The voted ballots of each party shall be bundled separately for return to the election administrator. The unvoted ballots deposited in the stub box shall be bundled with the stubs.

History: En. Sec. 65, Ch. 368, L. 1969; R.C.M. 1947, 23-3310; amd. Sec. 74, Ch. 571, L. 1979.

13-10-312 through 13-10-321. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-10-312. En. Sec. 66, Ch. 368, L. 1969; amd. Sec. 17, Ch. 365, L. 1977; R.C.M. 1947, 23-3311.

13-10-313. En. Sec. 67, Ch. 368, L. 1969; amd. Sec. 18, Ch. 365, L. 1977; R.C.M. 1947, 23-3312.

13-10-314. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(1).

13-10-315. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(6).

13-10-316. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(5).

13-10-317. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(3), (4).

13-10-318. (1)En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; Sec. 23-3313, R.C.M. 1947; (2) thru (4)En. Sec. 69, Ch. 368, L. 1969; amd. Sec. 3, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 20 Ch. 365, L. 1977; Sec. 23-3314, R.C.M. 1947; R.C.M. 1947, 23-3313(2), 23-3314.

13-10-319. En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(10).

13-10-320. En. Sec. 79, Ch. 368, L. 1969; amd. Sec. 24, Ch. 365, L. 1977; R.C.M. 1947, 23-3319.

13-10-321. En. Sec. 70, Ch. 368, L. 1969; amd. Sec. 22, Ch. 365, L. 1977; R.C.M. 1947, 23-3315.

13-10-322 through 13-10-324 reserved.

13-10-325. Withdrawal from nomination. (1) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom his declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. It shall be sworn or affirmed before an officer empowered to administer oaths. A candidate may not withdraw later than 85 days before a general election or 75 days before a primary election.

(2) Filing fees paid by the candidate may not be refunded.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(1); amd. Sec. 75, Ch. 571, L. 1979; amd. Sec. 27, Ch. 250, L. 1985; amd. Sec. 2, Ch. 229, L. 1989.

Cross-References

Officers who may administer oaths, 1-6-101.

Withdrawal based on promise or payment of consideration unlawful, 13-35-221.

13-10-326. Vacancy prior to primary election. (1) If a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327.

(2) If the death or withdrawal occurs less than 75 days before the primary, the affected political party shall appoint a candidate after the primary as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election. This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(2); amd. Sec. 76, Ch. 571, L. 1979; amd. Sec. 28, Ch. 250, L. 1985.

Cross-References

Certificate of primary ballot, 13-10-208.

Vacancy in governor or lieutenant governor candidacy, 13-10-328.

Certification of other election ballots, 13-12-201.

Labels to be prepared if replacement made after printing of ballot, 13-12-204.

Power of political party to appoint replacement, 13-38-101, 13-38-204.

13-10-327. Vacancy after primary and prior to general election. (1) If a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment shall be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment shall be made under rules adopted by the county central committee.

(2) Appointments to fill vacancies must be made no later than 75 days before the election. A candidate may not officially withdraw 85 days or less before a general election. However, if a candidate for partisan office dies less than 85 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. The procedures provided in 13-12-204 shall be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(3); amd. Sec. 77, Ch. 571, L. 1979; amd. Sec. 29, Ch. 250, L. 1985; amd. Sec. 3, Ch. 229, L. 1989.

Cross-References

Vacancy in executive branch office, Art. VI, sec. 6, 14, Mont. Const.; Title 2, ch. 16, part 5.

Vacancy in House or Senate, Title 5, ch. 2, part 4.

Vacancy in county office, 7-4-2106, 7-4-2206.

Declaration for nomination, 13-10-201.

Labels to be prepared if replacement made after printing of ballot, 13-12-204.

Power of political party to appoint replacement, 13-38-101, 13-38-204.

Vacancy in office of County Superintendent of Schools, 20-3-202.

Vacancy in office of School District Trustee, 20-3-309.

Vacancy in office of Community College District Trustee, 20-15-223.

Vacancy in office of Conservation District Supervisor, 76-15-312.

13-10-328. Vacancy in governor or lieutenant governor candidacy. The death or withdrawal of a candidate for governor or lieutenant governor does not affect the candidacy of the other joint candidate.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(4); amd. Sec. 78, Ch. 571, L. 1979.

Cross-References

Joint filing of Governor and Lieutenant Governor, Art. VI, sec. 2, Mont. Const.

Death or disqualification of Governor-Elect, Art. VI, sec. 14, Mont. Const.

Part 4

Presidential Preference Primary

13-10-401. Date of presidential primary. In the years in which a president of the United States is to be elected, a presidential preference primary election will be held on the same day as the primary provided for in 13-1-107.

History: En. 23-3322 by Sec. 1, Ch. 162, L. 1974; R.C.M. 1947, 23-3322; amd. Sec. 79, Ch. 571, L. 1979; amd. Sec. 4, Ch. 644, L. 1987.

13-10-402. Ballot. The regular party primary ballots shall be used for the presidential preference primary election. The presidential section of the ballot shall be placed before any other section, national, state, or local.

History: En. 23-3323 by Sec. 2, Ch. 162, L. 1974; R.C.M. 1947, 23-3323; amd. Sec. 80, Ch. 571, L. 1979; amd. Sec. 5, Ch. 644, L. 1987.

Cross-References

Ballots for primary elections, 13-10-209.

13-10-403. Form of ballot. The presidential preference ballot shall list all candidates nominated in accordance with the provisions of this part and shall, in addition, include a presidential ballot position which shall be designated as "no preference" and a blank write-in space.

History: En. 23-3324 by Sec. 3, Ch. 162, L. 1974; R.C.M. 1947, 23-3324; amd. Sec. 81, Ch. 571, L. 1979; amd. Sec. 6, Ch. 644, L. 1987.

13-10-404. Nomination petition. Before a presidential candidate may qualify for placement on the ballot, the candidate must be nominated on petitions with the verified signatures of at least 2,000 qualified electors. The secretary of state is empowered to prescribe the form and content of the petition.

History: En. 23-3325 by Sec. 4, Ch. 162, L. 1974; R.C.M. 1947, 23-3325; amd. Sec. 10, Ch. 52, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 52 in first sentence substituted "2,000" for "1,000" and after "electors" deleted "from each congressional district"; and made minor changes in style. Amendment effective July 1, 1993.

Applicability: Section 13, Ch. 52, L. 1993, provided: "[This act] applies to appointments made after [the effective date of this act]." Effective July 1, 1993.

Cross-References

Criminal provisions relating to signing petition, 13-35-207.

13-10-405. Submission and verification of petition. Petitions of nomination for the presidential preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures are gathered at least 1 week before the primary election filing deadline prescribed in 13-10-201(6). A filing fee is not required. The election administrator shall verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state.

History: En. 23-3326 by Sec. 5, Ch. 162, L. 1974; amd. Sec. 28, Ch. 342, L. 1977; R.C.M. 1947, 23-3326; amd. Sec. 82, Ch. 571, L. 1979; amd. Sec. 7, Ch. 644, L. 1987; amd. Sec. 4, Ch. 390, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 390 after "primary election" inserted "and the affidavits of circulation required by 13-27-302", after "gathered" inserted "at least 1 week before the primary election filing deadline prescribed in 13-10-201(6). A filing fee is not required" and deleted former last two sentences that read:

"The petitions must be submitted to the election administrator before the filing deadline established in 13-10-201(6). No filing fee is required"; and made minor changes in style. Amendment effective July 1, 1993.

13-10-406. Repealed. Sec. 11, Ch. 644, L. 1987.

History: En. 23-3327 by Sec. 6, Ch. 162, L. 1974; R.C.M. 1947, 23-3327.

13-10-407. Delegates to national presidential nominating conventions. The method of selection of delegates to national presidential nominating conventions is to be set by party rules. The use of the results of the presidential preference primary election by the political parties in their delegation selection systems is discretionary and is to be determined by party rules.

History: En. 23-3328 by Sec. 7, Ch. 162, L. 1974; R.C.M. 1947, 23-3328.

Part 5

Methods of Nomination Other Than by Primary Election

13-10-501. Petition for nomination by independent candidates or political parties not eligible to participate in primary election. (1) Except as provided in 13-10-504, nominations for public office by an independent candidate or a political party which does not meet the requirements of 13-10-601 may be made by a petition for nomination.

(2) The petition must contain the same information and the oath of the candidate required for a declaration for nomination.

(3) If a petition is filed by a political party, it must contain the party name and, in five words or less, the principle which such body represents.

(4) The form of the petition shall be prescribed by the secretary of state, and he shall furnish sample copies to the election administrators and on request to any individual.

(5) Each sheet of a petition must contain signatures of electors residing in only one county.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(1), (2); amd. Sec. 83, Ch. 571, L. 1979.

Cross-References

Procedure for independent filing for vacancy in office of State Senator, 5-2-406.

Procedure for independent filing for vacancy on Board of County Commissioners, 7-4-2106.

Procedure for independent filing for vacancy in county office, 7-4-2206.

13-10-502. Signature requirements for petition. (1) The petition for nomination must be signed by electors residing within the state and district or political subdivision in which the officer or officers are to be elected. Each signature line must contain spaces for the signature, post-office address, and printed last name of the signer.

(2) The number of signatures must be 5% or more of the total vote cast for the successful candidate for the same office at the last general election.

(3) If the office sought is a new office or the boundaries of the district or political subdivision in which the election is to be held have changed since the last election for the office, the secretary of state shall determine the number of signatures required for a petition of nomination for that office.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(3), (4); amd. Sec. 84, Ch. 571, L. 1979.

Cross-References

Vacancy in office of State Senator, 5-2-406.

Vacancy on Board of County Commissioners, 7-4-2106.

Vacancy in county office, 7-4-2206.

Criminal provisions relating to signing petition, 13-35-207.

13-10-503. Filing deadlines. (1) A petition for nomination and the affidavits of circulation required by 13-27-302, accompanied by the required filing fee, must be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. In the event there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.

(2) Except as provided in 13-10-504, each petition must be filed before the scheduled primary election or the filing deadline for the special or general election if a primary election is not scheduled.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(5); amd. Sec. 85, Ch. 571, L. 1979; amd. Sec. 1, Ch. 437, L. 1983; amd. Sec. 8, Ch. 591, L. 1991; amd. Sec. 5, Ch. 390, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 390 near beginning of (1), after "nomination", inserted "and the affidavits of circulation required by 13-27-302"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Officers for filing of petitions — filing deadline for primary elections, 13-10-201.

13-10-504. Independent or minor party candidates for president or vice president. (1) An individual who desires to run for president or vice president as an independent candidate or as a candidate of a party not qualified under 13-10-601 must file a petition for nomination with the secretary of state 90 days prior to the date of the general election.

(2) The petition and the affidavits of circulation required by 13-27-302 must first be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306.

(3) The petition must have the signatures of electors equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election. The names of the candidates for the required number of presidential electors allowable to Montana must be certified to the secretary of state when the petition for nomination is filed.

(4) A qualified independent presidential candidate may amend the petition and designate or choose a named vice presidential candidate until the filing date provided in 13-25-101.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(6); amd. Sec. 86, Ch. 571, L. 1979; amd. Sec. 6, Ch. 390, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 390 in (2), after "petition", inserted "and the affidavits of circulation required by 13-27-302"; inserted (4) authorizing qualified independent presidential candidate to amend petition and designate or choose named vice presidential candidate until filing date provided in 13-25-101; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Times for holding general elections, 13-1-104.

13-10-505. Applicability. The provisions of 13-10-501 through 13-10-504 shall not be used to fill vacancies or to nominate candidates in nonpartisan elections except for nominations to fill a vacancy as provided in 13-25-205.

History: **En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(7); amd. Sec. 87, Ch. 571, L. 1979; amd. Sec. 9, Ch. 3, L. 1985.**

13-10-506. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 1, Ch. 6, 2nd Ex. L. 1971; R.C.M. 1947, 23-3318.1.**

13-10-507. Independent candidates — association with political parties not allowed. (1) A person seeking office as an independent candidate may not be associated with a political party for 1 year prior to the submission of his nomination petition.

(2) For the purposes of subsection (1), "associated with a political party" means having run for office as a partisan candidate or having held an office with a political party designation.

History: **En. Sec. 9, Ch. 591, L. 1991.**

Part 6

Nominations by Political Parties

13-10-601. Parties eligible for primary election — petitions by minor parties. (1) Each political party that had a candidate for a statewide office who received a total vote that was 5% or more of the total votes cast for the successful candidate for governor in either of the last two general elections shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election and signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts. The petition and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306. The election administrator shall forward the verified petition to the secretary of state at least 75 days before the date of the primary. The petition must be submitted to the election administrator at least 1 week before the deadline for submitting the verified petition to the secretary of state.

History: **En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(1); amd. Sec. 88, Ch. 571, L. 1979; amd. Sec. 1, Ch. 368, L. 1981; amd. Sec. 30, Ch. 250, L. 1985; amd. Sec. 1, Ch. 196, L. 1991; amd. Sec. 7, Ch. 390, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 390 in (2), near beginning of second sentence after "petition", inserted "and the affidavits of circulation required by 13-27-302". Amendment effective July 1, 1993.

Cross-References

Nominations by parties unable to meet requirements of this section, Title 13, ch. 10, part 5.

Nomination of presidential electors, 13-25-101.

13-10-602. Use of party name. (1) Every political party and its regularly nominated candidates, members, and officers have the sole and exclusive right to the use of the party name. No candidate for office may use any word of the name of any other political party or organization other than that by which he is nominated.

(2) An independent or nonpartisan candidate shall not use any word of the name of any existing political party or organization in his candidacy.

History: En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(2), (3).

13-10-603. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(4).

13-10-604. Nominations for minor parties. Any political party that does not qualify under the provisions of 13-10-601 may make nominations for public office as provided in 13-10-501 through 13-10-505.

History: En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(5); amd. Sec. 89, Ch. 571, L. 1979.

CHAPTER 11

ELECTION PROCLAMATION

(Repealed. Sec. 407, Ch. 571, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections:

13-11-101. En. Sec. 13, Ch. 368, L. 1969; amd. Sec. 7, Ch. 365, L. 1977; R.C.M. 1947, 23-2901.

13-11-102. En. Sec. 14, Ch. 368, L. 1969; R.C.M. 1947, 23-2902.

13-11-103. En. Sec. 15, Ch. 368, L. 1969; R.C.M. 1947, 23-2903.

CHAPTER 12

ELECTION SUPPLIES AND BALLOTS

Part 1 — Election Supplies

13-12-101. Copies of election laws to be furnished.
13-12-102. Items to be furnished by election administrators.
13-12-103. Repealed.
13-12-104. Repealed.
13-12-105. Repealed.

Part 2 — Ballots

13-12-201. Secretary of state to certify ballot.
13-12-202. Ballot form and uniformity.
13-12-203. Printing of candidate's name and party designation on ballot.
13-12-204. Labels to be printed and distributed where vacancy has been filled.
13-12-205. Arrangement of names — rotation on ballot.
13-12-206. Repealed.
13-12-207. Order of placement.
13-12-208. Provision for write-in votes.
13-12-209. Paper ballots — stub size — content.

13-12-210. Number of ballots to be provided for each precinct.
13-12-211. Repealed.
13-12-212. Election administrator to provide printed ballots — other ballots prohibited.
13-12-213. Repealed.
13-12-214. Sample ballots.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Disposition of ballots and other election materials, 13-1-303.

Criminal provisions relating to election supplies and ballots, Title 13, ch. 35.

Part 1

Election Supplies

13-12-101. Copies of election laws to be furnished. The secretary of state shall furnish to each election administrator copies of this title sufficient to provide each election precinct in the administrator's county with two copies and to provide a small extra supply for the administrator.

History: (1)En. Sec. 16, Ch. 368, L. 1969; Sec. 23-2904, R.C.M. 1947; (2)En. 23-4794 by Sec. 19, Ch. 480, L. 1975; amd. Sec. 66, Ch. 365, L. 1977; Sec. 23-4794, R.C.M. 1947; R.C.M. 1947, 23-2904, 23-4794; amd. Sec. 90, Ch. 571, L. 1979; amd. Sec. 1, Ch. 121, L. 1983; amd. Sec. 1, Ch. 113, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 113 deleted former (2) that read: "(2) The secretary of state shall, at the expense of the state, furnish the election administrator with copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections. The public official with whom a candidate files a declaration, petition, or acceptance of nomination shall transmit one copy to the candidate. A copy shall also be furnished to any other person required to file a statement. Upon his own information or at the written request of any elector, the secretary of state shall provide a copy to any other individual who is a candidate or who is required to make a statement required by this title"; and made minor changes in style.

13-12-102. Items to be furnished by election administrators. The election administrators shall deliver to each polling place or to the chief election judge for a polling place all supplies necessary to conduct the election at that polling place. If the blank ballots for the polling place are delivered before noon of the day before the election, the election administrator shall retain sufficient ballots to supply electors requesting absentee ballots. The election administrator shall write in the pollbook for that polling place, after the numbers of the ballots retained, "reserved for absentee ballots".

History: Ap.p. Sec. 84, Ch. 368, L. 1969; Sec. 23-3501, R.C.M. 1947; Ap.p. Sec. 4280, Pol. C. 1895; re-en. Sec. 2939, Rev. C. 1907; re-en. Sec. 4515, R.C.M. 1921; Cal. Pol. C. Sec. 4064; re-en. Sec. 4515, R.C.M. 1935; Sec. 16-1156, R.C.M. 1947; R.C.M. 1947, 16-1156, 23-3501; amd. Sec. 91, Ch. 571, L. 1979.

13-12-103. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 85, Ch. 368, L. 1969; R.C.M. 1947, 23-3502.

13-12-104. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 86, Ch. 368, L. 1969; R.C.M. 1947, 23-3503.

13-12-105. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 87, Ch. 368, L. 1969; R.C.M. 1947, 23-3504.

Part 2
Ballots

Part Cross-References

Election on question of creating new county — form of ballot, 7-2-2218.

13-12-201. Secretary of state to certify ballot. (1) Seventy-five days or more before an election, except as provided in 13-10-208, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the secretary of state's office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the election administrator's office, which must include the notification specified in 13-37-126, and shall have the official ballots printed.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325.

History: En. Sec. 100, Ch. 368, L. 1969; R.C.M. 1947, 23-3517(3); amd. Sec. 92, Ch. 571, L. 1979; amd. Sec. 31, Ch. 250, L. 1985; amd. Sec. 4, Ch. 74, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 74 inserted (3) regarding notification of legislative candidate who is required to withdraw from candidacy because of residency change; and made minor changes in style.

13-12-202. Ballot form and uniformity. (1) The secretary of state shall prescribe the ballot form for all types of ballots used in this state.

(2) The names of all candidates printed upon the ballots shall be in type of the same size and character.

(3) When the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of every candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States shall appear on the ballot as provided in 13-25-101(2).

History: En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(4); amd. Sec. 93, Ch. 571, L. 1979.

Cross-References

Nonpartisan candidates to appear, 13-14-117.

13-12-203. Printing of candidate's name and party designation on ballot. (1) Except as provided in 13-10-209 and 13-10-303, in partisan elections, candidates' names shall be printed under the title of the office sought, with the name of the party, in not more than three words, or "Independent" printed opposite the name.

(2) In nonpartisan elections, the candidates' names shall be printed under the title of the office sought, with no description or designation printed with

the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates shall have printed with them the words "Nominated without party designation".

History: En. Sec. 92, Ch. 368, L. 1969; amd. Sec. 2, Ch. 254, L. 1971; R.C.M. 1947, 23-3509; amd. Sec. 94, Ch. 571, L. 1979.

13-12-204. Labels to be printed and distributed where vacancy has been filled. (1) If an appointment has been made to replace a candidate as provided in 13-10-326 or 13-10-327 after the ballots have been printed but before the election, the election administrator shall order labels printed containing the name of the new nominee and any other information required to go on the ballot.

(2) The election administrator shall affix the labels in the proper place on each ballot or deliver the labels to the chief election judges to be affixed in the proper place on each ballot before it is given to the elector.

History: En. Sec. 93, Ch. 368, L. 1969; R.C.M. 1947, 23-3510; amd. Sec. 95, Ch. 571, L. 1979.

13-12-205. Arrangement of names — rotation on ballot. (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the title of the respective offices.

(2) (a) Except as provided in subsection (3), if two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party shall be considered separately in determining the number of sets necessary for a primary election.

(b) The election administrator shall begin with a form arranged alphabetically and rotate so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names shall be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor shall be considered as a group.

(e) No more than one of the sets may be used in printing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

(3) In a precinct where voting devices are used, the election administrator need not rotate candidates' names as provided in subsection (2) on paper ballots required under 13-17-305; however, if more than 5% of the electors voting in the precinct in the last preceding general election voted using paper ballots, the election administrator shall rotate candidates' names on the paper ballots. If the candidates' names are not rotated, the election administrator shall determine by lot the arrangement of the names on the paper ballot.

History: En. Sec. 94, Ch. 368, L. 1969; R.C.M. 1947, 23-3511; amd. Sec. 96, Ch. 571, L. 1979; amd. Sec. 1, Ch. 576, L. 1985.

Cross-References

Arrangement of ballot in primary election, 13-10-209.

Arrangement of names in conservation district election, 76-15-303.

13-12-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 95, Ch. 368, L. 1969; amd. Sec. 28, Ch. 365, L. 1977; R.C.M. 1947, 23-3512.

13-12-207. Order of placement. (1) The order on the ballot for state and national offices shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line shall be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party shall be grouped together.

(b) United States senator;
(c) United States representative;
(d) Governor and lieutenant governor;
(e) Secretary of state;
(f) Attorney general;
(g) State auditor;
(h) Public service commissioners;
(i) State superintendent of public instruction;
(j) Clerk of the supreme court;
(k) Chief justice of the supreme court;
(l) Justices of the supreme court;
(m) District court judges;
(n) State senators;
(o) Members of the house of representatives.

(2) The following order of placement shall be observed for county offices:
(a) clerk of the district court;
(b) county commissioner;
(c) county clerk and recorder;
(d) sheriff;
(e) coroner;
(f) county attorney;
(g) county superintendent of schools;
(h) county auditor;
(i) public administrator;
(j) county assessor;
(k) county treasurer;
(l) surveyor;
(m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, consolidated, or confederated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments shall be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school

district, or other political subdivision shall follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they shall not be listed, but the order of the offices to be filled shall be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office shall precede the short-term.

History: Ap. p. Sec. 96, Ch. 368, L. 1969; amd. Sec. 5, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 29, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; Sec. 23-3513, R.C.M. 1947; Ap. p. Sec. 100, Ch. 368, L. 1969; Sec. 23-3517, R.C.M. 1947; R.C.M. 1947, 23-3513, 23-3517(1), (2); amd. Sec. 97, Ch. 571, L. 1979.

13-12-208. Provision for write-in votes. Below the list of names of candidates for each office there must be as many blank spaces for write-in voting as there are officers to be elected.

History: En. Sec. 97, Ch. 368, L. 1969; R.C.M. 1947, 23-3514; amd. Sec. 98, Ch. 571, L. 1979.

13-12-209. Paper ballots — stub size — content. (1) Paper ballots shall be printed on the same sheet with a stub, separated by perforation.

(2) The stub shall extend the entire width of the ballot and have instructions printed on it.

(3) Upon the face of the stub shall be printed the following:

This ballot should be marked with an "x" in the square before the name of each individual or candidate for whom the elector intends to vote. The elector may write in or affix a preprinted label in the blank spaces or over any other name, the name of an individual for whom he wishes to vote and vote by marking an "x" in the square before the name. If a ballot contains a constitutional amendment or other issue to be submitted to a vote of the people, it is voted on by marking an "x" in the square before the amendment or issue.

(4) On the stub shall be printed or stamped the consecutive number of the ballot, beginning with number 1 and increasing in regular numerical order to the total number of ballots required for the precinct.

History: En. Sec. 98, Ch. 368, L. 1969; amd. Sec. 1, Ch. 414, L. 1975; amd. Sec. 30, Ch. 365, L. 1977; R.C.M. 1947, 23-3515; amd. Sec. 99, Ch. 571, L. 1979.

13-12-210. Number of ballots to be provided for each precinct. (1) The election administrator shall provide each election precinct with sufficient ballots for the electors registered, plus an extra supply to cover spoiled ballots.

(2) The election administrator shall keep a record in his office showing the exact number of ballots that are delivered to the election judges of each precinct.

History: En. Sec. 99, Ch. 368, L. 1969; R.C.M. 1947, 23-3516; amd. Sec. 100, Ch. 571, L. 1979.

13-12-211. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 90, Ch. 368, L. 1969; R.C.M. 1947, 23-3507.

13-12-212. Election administrator to provide printed ballots — other ballots prohibited. Except as otherwise provided in the election laws of this state:

(1) the election administrator shall provide printed ballots for every election. He shall have printed on the ballot the names of all candidates for all offices to be filled at the election and the title and other wording required by law for all ballot issues.

(2) ballots other than those printed by the election administrator may not be cast or counted in any election.

History: En. Sec. 89, Ch. 368, L. 1969; amd. Sec. 27, Ch. 365, L. 1977; R.C.M. 1947, 23-3506; amd. Sec. 101, Ch. 571, L. 1979.

Cross-References

Ballot form for ballot issues, 13-27-501.

13-12-213. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(1) thru (3).

13-12-214. Sample ballots. The election administrator may have sample ballots printed in a number sufficient to answer requests from the political parties, schools, and electors. Sample ballots must be duplicates of the official ballots but must be clearly distinguishable from official ballots and may not have perforated stubs or be numbered.

History: En. Sec. 102, Ch. 571, L. 1979.

Cross-References

Conduct of election on question of creating new county, 7-2-2219.

CHAPTER 13

ELECTION PROCEDURE

Part 1 — Procedure at Polling Place

13-13-101. Duties — proclamation prior to opening and closing polls.
13-13-102 through 13-13-110. Repealed.
13-13-111. Provision and use of election booths, voting machines, or voting devices.
13-13-112. Display of instructions for electors.
13-13-113. Warning notice to be posted.
13-13-114. Marking precinct register book before elector votes.
13-13-115. Pollbooks.
13-13-116. Ballots to be stamped — one ballot to elector.
13-13-117. Method of voting.
13-13-118. Taking ballot to disabled elector.
13-13-119. Aid to disabled elector.
13-13-120. Poll watchers — announcement of elector's name.
13-13-121. Additional poll watchers.
13-13-122. Preventing obstructions.

Part 2 — Procedure for Electors Absent from the Polling Place

13-13-201. Voting by absentee ballot — qualifications.
13-13-202. Repealed.
13-13-203. Absentee ballots where voting machines or devices used.
13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death.
13-13-205. When ballots to be available.
13-13-206 through 13-13-210 reserved.
13-13-211. Application of absentee, chronically ill, handicapped, elderly, or physically incapacitated elector for ballot — special absentee ballot application.
13-13-212. Application for absentee ballot.
13-13-213. Transmission of application to election administrator — delivery of ballot.
13-13-214. Mailing ballot to elector.
13-13-215 through 13-13-220 reserved.
13-13-221. Marking and affirming ballot.

13-13-222. Voting before election day by prospective absentee, chronically ill, or physically incapacitated elector.
13-13-223 and 13-13-224 reserved.
13-13-225. Special absentee election boards — members — appointment.
13-13-226. Manner of selection.
13-13-227. Oath of board members.
13-13-228. Compensation.
13-13-229. Voting performed before the special absentee election board.
13-13-230. Authorization to increase county mill levy.
13-13-231. Disposition of marked ballot upon receipt by election administrator.
13-13-232. Delivery of ballots to election judges — ballots to be rejected.
13-13-233. Issue and record of absentee ballots — certificate.
13-13-234. Duty of election judges — pollbook.
13-13-235. Renumbered 13-13-241 by Code Commissioner, 1979.
13-13-236. Renumbered 13-13-243 by Code Commissioner, 1979.
13-13-237. Repealed.
13-13-238. Repealed.
13-13-239. Renumbered 13-13-244 by Code Commissioner, 1979.
13-13-240. Repealed.
13-13-241. Examination of absentee ballot envelopes and affirmations while polls open — deposit of absentee and unvoted ballots.
13-13-242. Repealed.
13-13-243. Rejected absentee ballots.
13-13-244. Opening of envelopes after deposit.
13-13-245 through 13-13-270 reserved.
13-13-271. Federal write-in absentee ballot — qualifications.
13-13-272. Procedure for voting federal write-in absentee ballot.
13-13-273. Counting of federal write-in absentee ballots.
13-13-274 and 13-13-275 reserved.
13-13-276. Legislative findings and purpose.
13-13-277. Registration and voting by facsimile authorized.
13-13-278. Adoption of rules — acceptance of funds.
13-13-279. Advisory council assistance — report to legislature.

Part 3 — Challenges

13-13-301. Challenges on election day.
13-13-302. Repealed.
13-13-303. Repealed.
13-13-304. Duties of election judges in response to challenges.
13-13-305. Election judges' powers concerning challenges.
13-13-306. Proceedings pursuant to challenges — oaths.
13-13-307. Determination of challenges.
13-13-308. Repealed.
13-13-309. Proceedings after determination of challenge.
13-13-310. List of challenges to be kept.
13-13-311. Vote by challenged elector.

Chapter Cross-References

Suffrage and elections, Art. IV, Mont. Const.

Definitions applicable to this chapter, 13-1-101.

Criminal provisions relating to election procedures, Title 13, ch. 35.

School elections, Title 20, ch. 20.

Part 1

Procedure at Polling Place

Part Cross-References

Accessibility of polling places, Title 13, ch. 3, part 2.

13-13-101. Duties — proclamation prior to opening and closing polls. (1) The election judges shall meet at their assigned polling places at the time set by the election administrator. The judges shall take and subscribe the official oath prescribed by the constitution. They may administer the oath to each other. The judges shall check all supplies and complete preparations for voting before the time set for opening the polls, under the direction of the chief election judge.

(2) Before the polls are opened or closed, that fact must be proclaimed at the place of election.

History: En. Sec. 102, Ch. 368, L. 1969; R.C.M. 1947, 23-3602; amd. Sec. 103, Ch. 571, L. 1979.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Oath of judges, 13-4-105.

13-13-102 through 13-13-110. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-13-102. En. Sec. 101, Ch. 368, L. 1969; R.C.M. 1947, 23-3601.

13-13-103. En. Sec. 103, Ch. 368, L. 1969; R.C.M. 1947, 23-3603.

13-13-104. En. Sec. 110, Ch. 368, L. 1969; amd. Sec. 3, Ch. 254, L. 1971; amd. Sec. 32, Ch. 365, L. 1977; R.C.M. 1947, 23-3610.

13-13-105. En. Sec. 104, Ch. 368, L. 1969; R.C.M. 1947, 23-3604.

13-13-106. En. Sec. 106, Ch. 368, L .1969; amd. Sec. 31, Ch. 365, L. 1977; R.C.M. 1947, 23-3606.

13-13-107. (1)En. Sec. 107, Ch. 368, L. 1969; amd. Sec. 42, Ch. 334, L. 1977; Sec. 23-3607, R.C.M. 1947; (2)En. Sec. 108, Ch. 368, L. 1969; Sec. 23-3608, R.C.M. 1947; R.C.M. 1947, 23-3607, 23-3608.

13-13-108. En. Sec. 109, Ch. 368, L. 1969; R.C.M. 1947, 23-3609.

13-13-109. En. Sec. 118, Ch. 368, L. 1969; R.C.M. 1947, 23-3618.

13-13-110. En. Sec. 105, Ch. 368, L. 1969; amd. Sec. 41, Ch. 334, L. 1977; R.C.M. 1947, 23-3605.

13-13-111. Provision and use of election booths, voting machines, or voting devices. (1) The election administrator shall provide a sufficient number of booths, voting machines, or voting devices to allow voting to proceed with as little delay as possible. Booths, voting machines, or voting devices must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted, and the election judges may not permit any individual to remain in any position that would allow him to see how the elector votes or has voted.

(2) No more than one individual may occupy a booth at one time except when assistance is furnished an elector as provided by law. No individual may occupy a booth or use a voting machine or device longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

History: En. Sec. 104, Ch. 571, L. 1979.

Cross-References

Secret ballot requirement, Art. IV, sec. 1, Mont. Const.

Provisions relating to disabled electors, 13-13-118, 13-13-119.

Criminal provisions relating to ballot secrecy, 13-35-201, 13-35-202.

13-13-112. Display of instructions for electors. (1) Instructions for electors on how to prepare their ballots or use machines or devices must be posted in each compartment provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, 18 point or larger, and explain how to:

(a) obtain ballots for voting;

(b) prepare ballots for deposit in the ballot box; and

(c) obtain a new ballot in place of one spoiled by accident.

(3) If the instructions for use of the machine or device are printed on the machine or device or are part of a ballot package given each elector, separate instructions need not be posted in the compartment.

(4) Official ballots for the precinct, clearly marked "sample" across the face, shall be posted in each booth or compartment and in conspicuous places about the polling place in all precincts where paper ballots are used. Diagrams showing the arrangement of the ballot for that precinct shall be posted in conspicuous places about the polling place in all precincts using machines or devices.

History: En. Sec. 105, Ch. 571, L. 1979; amd. Sec. 13, Ch. 200, L. 1987.

Cross-References

Criminal provisions relating to injury to election materials, 13-35-206.

13-13-113. Warning notice to be posted. Warning notices shall be posted in conspicuous places in the polling place. Each notice shall be headed "WARNING" in large letters and shall state:

"The sections of law printed below list specific conduct or actions which may cause an elector to be subject to criminal prosecution. This is not intended to be a complete printing of all laws pertaining to election violations."

Below this statement shall be printed the following sections: 13-35-201; 13-35-202; 13-35-206; 13-35-211; 13-35-214; 13-35-217; and 13-35-218.

History: En. Sec. 106, Ch. 571, L. 1979.

13-13-114. Marking precinct register book before elector votes. (1) Before an elector is permitted to receive a ballot or vote, he shall sign his name on the place designated in the precinct register. Before signing the register, the elector shall state his name and current address. If the name or address is not as listed in the precinct register, the elector must complete a transfer form or new registration form to correct the information. The election judges shall write "transfer form" or "registration form" beside the name of any elector submitting a form. No elector may sign the precinct register unless his name and address are the same as shown in the register or the proper corrections have been made.

(2) If the elector is not able to sign his name to the precinct register, a fingerprint or other identifying mark may be used.

(3) If the elector fails or refuses to sign his name or, if unable to write, fails to provide a fingerprint or other identifying mark, he may not vote.

History: En. Sec. 107, Ch. 571, L. 1979; amd. Sec. 10, Ch. 591, L. 1991.

13-13-115. Pollbooks. (1) In precincts using paper ballots, the name of each elector who votes shall be entered in a pollbook and numbered in the order voting so that the number corresponds with the number on the stubs of the ballots given the elector or an election judge may use a numbering device to stamp the number of the ballot stub next to the name of the elector in a precinct register/pollbook.

(2) In precincts where machines or devices are used, a pollbook need be used only for paper ballots. The election administrator shall provide such precincts with some method of recording the number of individuals voting.

History: En. Sec. 108, Ch. 571, L. 1979; amd. Sec. 11, Ch. 591, L. 1991.

13-13-116. Ballots to be stamped — one ballot to elector. (1) Before delivering ballots to an elector, the election judges shall stamp the words "official ballot" on the ballot. A part of the stamp may not appear on the stub. They shall also stamp the name of the county, the number of the precinct, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.

(2) Each elector shall receive from the election judges one of each type of ballot being used at the election.

History: En. Sec. 109, Ch. 571, L. 1979; amd. Sec. 6, Ch. 298, L. 1987; amd. Sec. 8, Ch. 390, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 390 in last sentence of (1), after "precinct", deleted "the date of the election"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Stamping of absentee ballot, 13-13-214.

13-13-117. Method of voting. (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "x" in the square before the name of the individual or individuals for whom he intends to vote.

(3) If the ballot contains a ballot issue, he shall mark an "x" in the applicable square indicating his vote either for or against the issue.

(4) The elector may write the name of an individual for whom he wishes to vote in the blank space or affix a preprinted label in the blank space and may vote for that individual by marking an "x" before the name. When the ballot is marked in this manner, it must be counted the same as though the name were printed upon the ballot and marked by the elector, except as provided in 13-15-202.

(5) An elector voting a ballot that will be counted by an optical scan ballot tabulating device shall mark his ballot in the manner prescribed on his ballot. However, his ballot must not be invalidated if he marks the voting positions with an "x".

(6) After preparing his ballot, the elector must fold it so the face of the ballot will be concealed and the official stamp may be seen and hand it to the election judges.

(7) The judge receiving the ballots shall remove the stubs in sight of the elector and deposit each ballot in the ballot box and each stub in a box for detached stubs. The judge must place the ballots in the ballot box immediately without opening or examining them.

(8) No individual except an election judge may put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box.

(9) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it.

History: **En. Sec. 110, Ch. 571, L. 1979; amd. Sec. 7, Ch. 298, L. 1987; amd. Sec. 2, Ch. 391, L. 1989.**

Cross-References

Declaration of intent for write-in candidates, 13-10-211.

13-13-118. Taking ballot to disabled elector. (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. The elector may request assistance in marking his ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating he is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. The judge receiving the voted ballots shall distinctly announce he has "a ballot offered by ...... (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If no objection is heard, the judge shall remove the stub and place the ballot and stub in the proper boxes. Any challenge to the elector's right to vote shall be resolved as provided in Title 13, chapter 13, part 3.

History: **En. Sec. 111, Ch. 571, L. 1979.**

13-13-119. Aid to disabled elector. (1) The election judges or an individual chosen by the disabled elector as specified in subsection (4) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The election judges shall require the declaration of disability by the elector to be under oath and may administer the oath.

(3) The elector may be assisted by two judges who represent different parties. The judges must certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(4) Instead of assistance as provided in subsection (3), the elector may request the assistance of any individual whom he designates to the judges to aid him in the marking of his ballot, and the individual chosen shall sign his name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector's employer, an agent of his employer, or an officer or agent of the elector's union.

(5) No elector other than the one who requires assistance may divulge to anyone within the polling place the name of any candidate for whom he intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of his ballot.

History: **En. Sec. 112, Ch. 571, L. 1979; amd. Sec. 8, Ch. 298, L. 1987.**

13-13-120. Poll watchers — announcement of elector's name. The election judges shall permit one poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with the election procedures. At the time when each elector signs his name, one of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections.

History: En. Sec. 113, Ch. 571, L. 1979.

13-13-121. Additional poll watchers. A candidate, a group of candidates, or any group having an interest in the election may request the election administrator to allow additional poll watchers at any precinct. The election administrator shall grant such requests if the number of poll watchers at the polling place will not interfere with the election procedures.

History: En. Sec. 114, Ch. 571, L. 1979.

13-13-122. Preventing obstructions. An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.

History: En. Sec. 115, Ch. 571, L. 1979.

Cross-References

Electors — privilege from arrest, Art. IV, sec. 6, Mont. Const.

Persons exempt from arrest, 46-6-102.

Part 2

Procedure for Electors Absent from the Polling Place

Part Cross-References

Registration and voting by facsimile authorized, 13-13-277.

13-13-201. Voting by absentee ballot — qualifications. A qualified registered elector is entitled to vote by absentee ballot, as provided in this part, if the elector:

(1) expects to be absent from the county or precinct and unable to vote in person at the time of holding the election;

(2) is physically incapacitated and unable to go to the polls on election day;

(3) suffers from chronic illness or general ill health; or

(4) is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day. Such health emergency must arise from unforeseen circumstances that require the elector to seek health care or medical assistance.

History: En. Sec. 119, Ch. 368, L. 1969; R.C.M. 1947, 23-3701; amd. Sec. 116, Ch. 571, L. 1979; amd. Sec. 1, Ch. 239, L. 1985.

13-13-202. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 132, Ch. 368, L. 1969; R.C.M. 1947, 23-3714.

13-13-203. Absentee ballots where voting machines or devices used. (1) In precincts where voting machines or devices are used, the election administrator shall if necessary print and provide:

(a) ballots in official form for qualified electors who may vote absentee as provided in 13-13-201; and

(b) ballot boxes required for precincts in which printed ballots are used.

(2) Absentee ballots received in those precincts shall be handled as provided in this chapter.

History: En. Sec. 134, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(1), (2); amd. Sec. 117, Ch. 571, L. 1979; amd. Sec. 2, Ch. 239, L. 1985.

13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death. (1) If an elector has voted by absentee ballot but the absentee ballot contains printing errors or omissions, the elector may vote in person in any manner at his polling place.

(2) If an elector does not receive his absentee ballot or if the absentee ballot was destroyed, he may appear at his polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that his ballot has not been received or was destroyed. Before the ballot is given to the elector, the election judge shall write upon the back of the ballot the number of the ballot. The ballot may be cast out if it appears to the court to have been wrongfully or illegally voted.

(3) If an elector votes by absentee ballot and dies between the time of balloting and election day, his ballot does not count.

History: En. Sec. 127, Ch. 571, L. 1979; amd. Sec. 2, Ch. 120, L. 1983; amd. Sec. 9, Ch. 298, L. 1987.

13-13-205. When ballots to be available. (1) The election administrator shall ensure that ballots are printed and available for absentee voting at least 45 days prior to an election for those elections held in compliance with 13-1-104(1) and 13-1-107(1).

(2) For elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2), the election administrator shall ensure that ballots are printed and available for absentee voting at least 20 days prior to an election.

History: En. Sec. 2, Ch. 586, L. 1983; amd. Sec. 32, Ch. 250, L. 1985; amd. Sec. 10, Ch. 298, L. 1987.

Cross-References

Voting by prospective absentee or physically incapacitated elector, 13-13-222.

13-13-206 through 13-13-210 reserved.

13-13-211. Application of absentee, chronically ill, handicapped, elderly, or physically incapacitated elector for ballot — special absentee ballot application. (1) Except as provided in 13-2-214, during a period beginning 75 days before the day of election and ending at noon on the day before the election, an individual may apply to the election administrator for an absentee ballot if he is:

(a) an elector expecting to be absent from the county in which his voting precinct is situated;

(b) an elector who is chronically ill or in general ill health;

(c) a handicapped or elderly elector who has been assigned to an inaccessible polling place; or

(d) an elector who will be unable to go to the polls because of physical incapacity.

(2) A qualified elector who is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day may request to vote by absentee ballot. The election administrator shall honor any such request received up to and including noon on election day. The election administrator is not required to comply with a request by an elector who is absent from the county.

History: En. Sec. 121, Ch. 368, L. 1969; amd. Sec. 1, Ch. 145, L. 1975; R.C.M. 1947, 23-3703; amd. Sec. 118, Ch. 571, L. 1979; amd. Sec. 3, Ch. 239, L. 1985; amd. Sec. 4, Ch. 396, L. 1985; amd. Sec. 14, Ch. 200, L. 1987.

Cross-References

Accessibility of polling places, Title 13, ch. 3, part 2.

13-13-212. Application for absentee ballot. (1) Application for absentee ballots shall be made by a written request signed by the applicant and addressed to or transmitted by facsimile to the election administrator of the applicant's county of residence.

(2) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant and addressed to or transmitted by facsimile to the election administrator of the applicant's county of residence.

(3) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time the ballot is delivered in person by the special absentee election board provided for in 13-13-225. Such elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered to him by the special absentee election board at his place of confinement, hospitalization, or residence within the county. Such a request may be made no later than noon on election day.

History: En. Sec. 122, Ch. 368, L. 1969; amd. Sec. 1, Ch. 287, L. 1975; R.C.M. 1947, 23-3704; amd. Sec. 119, Ch. 571, L. 1979; amd. Sec. 4, Ch. 239, L. 1985; amd. Sec. 12, Ch. 591, L. 1991.

13-13-213. Transmission of application to election administrator — delivery of ballot. (1) Except as provided in subsection (2), the elector shall forward the application by mail or deliver it in person to the election administrator. The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, he shall deliver the ballot.

(2) In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212(3) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector.

History: En. Sec. 123, Ch. 368, L. 1969; R.C.M. 1947, 23-3705; amd. Sec. 120, Ch. 571, L. 1979; amd. Sec. 5, Ch. 239, L. 1985.

13-13-214. Mailing ballot to elector. (1) As soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each elector from whom he has received a valid application whatever official ballots are necessary. Ballots shall be sent immediately to electors submitting valid requests after the official ballots are printed.

(2) The election administrator shall enclose with the ballots a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state shall be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots sent to an absentee elector as provided in 13-13-116.

(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face such information and graphics and be of such color as may be prescribed by the secretary of state consistent with the regulations established by the federal election commission, U.S. postal service, or other federal agency.

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so it can be identified as being used by any one elector.

(6) Instructions for voting shall be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments which may be used to mark the absentee ballot.

(7) The return envelope shall be self-addressed to the election administrator.

History: En. Sec. 124, Ch. 368, L. 1969; amd. Sec. 1, Ch. 246, L. 1971; amd. Sec. 2, Ch. 287, L. 1975; R.C.M. 1947, 23-3706; amd. Sec. 121, Ch. 571, L. 1979; amd. Sec. 1, Ch. 110, L. 1983.

13-13-215 through 13-13-220 reserved.

13-13-221. Marking and affirming ballot. (1) After the elector marks his ballots, he shall fold them so that the vote is concealed and so that the official stamp is visible. The stubs shall be left attached and the ballots should be folded so that the stubs can be detached without revealing the vote.

(2) The elector shall place the ballots in the envelope addressed to the election administrator and seal it securely. If the ballots are for a primary election, the party ballot or ballots not voted shall be placed in the envelope marked for that purpose and enclosed in the outer envelope with the voted ballots.

(3) The elector shall complete and sign the affirmation on the envelope.

(4) The elector shall mail the envelope, postage prepaid, or deliver it to the election administrator or the special absentee election board.

History: En. Sec. 125, Ch. 368, L. 1969; amd. Sec. 3, Ch. 287, L. 1975; R.C.M. 1947, 23-3707; amd. Sec. 122, Ch. 571, L. 1979; amd. Sec. 6, Ch. 239, L. 1985.

13-13-222. Voting before election day by prospective absentee, chronically ill, or physically incapacitated elector. (1) As soon as the official ballots are available, the election administrator shall permit an elector who is present in his county and who has reason to believe that he will be absent from the county, ill, or physically incapacitated on election day to vote before election day before the election administrator.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the election administrator, he shall deal with it in the same manner as if it had come by mail.

History: En. Sec. 130, Ch. 368, L. 1969; amd. Sec. 4, Ch. 287, L. 1975; R.C.M. 1947, 23-3712; amd. Sec. 123, Ch. 571, L. 1979; amd. Sec. 1, Ch. 586, L. 1983; amd. Sec. 7, Ch. 239, L. 1985.

Cross-References

When ballots to be available, 13-13-205.

Disposition of absentee ballot, 13-13-231.

13-13-223 and 13-13-224 reserved.

13-13-225. Special absentee election boards — members — appointment. (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot under 13-13-201(4).

(2) In a partisan election, each special absentee election board shall consist of two members, one from each of the two political parties receiving the highest votes in the state during the last preceding general election. Board members must reside in the county in which they serve.

(3) No member of a special absentee election board may be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county.

History: En. Sec. 10, Ch. 239, L. 1985.

13-13-226. Manner of selection. The election administrator shall make appointments to the special absentee election board from lists of qualified electors prepared in substantially the same manner as provided in 13-4-102. If the list is insufficient to make all the appointments required, the election administrator may appoint any qualified registered elector from the county. The election administrator may refuse for cause to appoint or may for cause remove a member of a special absentee election board.

History: En. Sec. 11, Ch. 239, L. 1985.

13-13-227. Oath of board members. Before assuming any of his responsibilities under this part, each member of a special absentee election board must take and subscribe the official oath in the same manner as prescribed for an election judge in 13-4-105.

History: En. Sec. 12, Ch. 239, L. 1985.

13-13-228. Compensation. (1) Each member of a special absentee election board is entitled to compensation for the number of hours worked.

(2) Each member of a special absentee election board is entitled to full reimbursement for actual travel expenses incurred while delivering ballots on election day.

(3) The election administrator shall pay each member the same compensation and certify amounts due in the same manner as for an election judge as provided for in 13-4-106(1).

History: **En. Sec. 13, Ch. 239, L. 1985.**

13-13-229. Voting performed before the special absentee election board. (1) As provided in 13-13-201(4), a qualified elector who becomes ill or is prevented from voting at the polls because of a health emergency may vote by absentee ballot. Pursuant to 13-13-212(3), such elector may request that a special absentee election board personally deliver a ballot to him.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in 13-13-221, except the elector must hand the marked ballot in the sealed envelope to the special absentee election board, and the board must deliver the sealed envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking his ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election board appointed to personally deliver the ballot. Any such assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119.

History: **En. Sec. 14, Ch. 239, L. 1985.**

13-13-230. Authorization to increase county mill levy. Each county may levy an amount not exceeding 1 mill as may be necessary to finance the additional cost of administering a special absentee election board program pursuant to 13-13-225 through 13-13-229. Such mill levy may not be included as part of any existing mill levy or special mill levy assessed by the county. The amount of any mill levy adopted under this section must be reasonably related to the actual cost of providing services as required by 13-13-225 through 13-13-229.

History: **En. Sec. 15, Ch. 239, L. 1985.**

13-13-231. Disposition of marked ballot upon receipt by election administrator. (1) Upon receipt of the voted absentee ballot, the election administrator shall immediately attach the elector's application to the envelope and mark the precinct number for delivery.

(2) The election administrator shall safely keep the absentee ballots in his office until delivered by him.

History: **En. Sec. 126, Ch. 368, L. 1969; amd. Sec. 36, Ch. 365, L. 1977; R.C.M. 1947, 23-3708; amd. Sec. 124, Ch. 571, L. 1979.**

13-13-232. Delivery of ballots to election judges — ballots to be rejected. (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall deliver the envelope to the judges at the same time the ballots are delivered.

(2) If absentee ballots are received after the ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall immediately deliver the envelopes to the judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not received as required by 13-13-211, or if an absentee ballot is received by the election administrator after the close of the

polls and was not issued to an elector pursuant to 13-13-201(4), the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots so endorsed shall be retained by the election administrator and placed with the proper records when they are returned to him.

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971; R.C.M. 1947, 23-3709(1) thru (3); amd. Sec. 125, Ch. 571, L. 1979; amd. Sec. 8, Ch. 239, L. 1985.

13-13-233. Issue and record of absentee ballots — certificate. (1) The absentee ballots delivered shall be regular official ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The election administrator shall deliver to the chief election judges to whom the ballots are delivered a certificate stating:

(a) the number of absentee ballots delivered as well as those marked before him;

(b) the number of ballots retained for late absentee voting; and

(c) the names of the electors to whom such ballots were delivered or by whom they have been marked if marked before him.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3).

History: En. Sec. 128, Ch. 368, L. 1969; R.C.M. 1947, 23-3710; amd. Sec. 126, Ch. 571, L. 1979; amd. Sec. 3, Ch. 120, L. 1983.

13-13-234. Duty of election judges — pollbook. (1) The election judges, at the opening of the polls, shall note on the pollbook opposite the numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent, chronically ill, or physically incapacitated electors, as well as those electors prevented from voting at the polls because of a sudden illness or health emergency.

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate of the election administrator and the number of his ballot.

History: En. Sec. 129, Ch. 368, L. 1969; amd. Sec. 37, Ch. 365, L. 1977; R.C.M. 1947, 23-3711; amd. Sec. 128, Ch. 571, L. 1979; amd. Sec. 9, Ch. 239, L. 1985.

13-13-235. Renumbered 13-13-241 by Code Commissioner, 1979.

13-13-236. Renumbered 13-13-243 by Code Commissioner, 1979.

13-13-237. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(10).

13-13-238. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(11).

13-13-239. Renumbered 13-13-244 by Code Commissioner, 1979.

13-13-240. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971; R.C.M. 1947, 23-3709(4).

13-13-241. Examination of absentee ballot envelopes and affirmations while polls open — deposit of absentee and unvoted ballots. (1) While the polls are open, the election judges may compare the signature of the elector on the absentee ballot request and affirmation. If they find that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they may open the absentee ballot envelope.

(2) If the absentee ballot does not meet the requirements specified in subsection (1), it must be rejected. The election judges, without opening the absentee ballot envelope, shall mark across it the reason for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.

(3) After opening the absentee envelope and without unfolding the ballots or permitting them to be examined, the election judges shall ascertain whether the stubs are attached or enclosed and whether the numbers correspond to the numbers in the certificate of the election administrator. If so, they shall detach the stubs and deposit the stubs and ballots in the proper ballot boxes. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure envelope.

(4) If upon opening the absentee ballot envelope it is found that the number does not correspond to the number on the certificate of the election administrator, the ballot must be rejected. The reason for rejection must be marked on the back of the ballot or ballots, and the statement must be initialed by a majority of the election judges.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(1) thru (6); amd. Sec. 129, Ch. 571, L. 1979; Sec. 13-13-235, MCA 1979; redes. 13-13-241 by Code Commissioner, 1979; amd. Sec. 11, Ch. 298, L. 1987.

13-13-242. Repealed. Sec. 20, Ch. 298, L. 1987.

History: En. Sec. 130, Ch. 571, L. 1979.

13-13-243. Rejected absentee ballots. (1) The rejected ballots, the applications, and all envelopes shall be enclosed in an envelope and sealed, and the judges shall write on the envelope "rejected ballot(s) of absentee elector" (writing in the elector's name).

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be marked "voted in person" and initialed by a majority of the election judges.

(3) The unopened absentee ballot envelope of an elector who dies before election day shall be marked "died before election day" and initialed by a majority of the election judges if they are notified of the death on election day. The election administrator shall make and sign the notation if notice of the death is received before delivery of the absentee ballot to the polling place.

(4) All rejected ballots shall be placed in the sealed package in which the voted ballots are required to be placed and may not be opened without a court order.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(7) thru (9); amd. Sec. 131, Ch. 571, L. 1979; Sec. 13-13-236, MCA 1979; redes. 13-13-243 by Code Commissioner, 1979; amd. Sec. 4, Ch. 120, L. 1983.

13-13-244. Opening of envelopes after deposit. If an envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the envelope shall be opened without a court order and the ballot cast.

History: En. Sec. 133, Ch. 368, L. 1969; amd. Sec. 39, Ch. 365, L. 1977; R.C.M. 1947, 23-3715; Sec. 13-16-239, MCA 1979; redes. 13-13-244 by Code Commissioner.

13-13-245 through 13-13-270 reserved.

13-13-271. Federal write-in absentee ballot — qualifications. (1) An elector qualified by 13-2-211 who fears his regular absentee ballot might not arrive in time to vote and return to the election administrator of the county of his residence and registration may also vote a federal write-in absentee ballot.

(2) The federal write-in absentee ballot is available to military personnel and civilians overseas through the same source that provides federal post card application forms and is only valid for federal elections.

(3) Except as provided in 13-2-212(3), the elector shall apply for a regular absentee ballot as provided in 13-13-212(2) not less than 30 days before the general election.

History: En. Sec. 1, Ch. 43, L. 1987; amd. Sec. 3, Ch. 302, L. 1991.

13-13-272. Procedure for voting federal write-in absentee ballot. (1) An elector voting a federal write-in ballot may designate a candidate by writing in the name of the candidate or by writing in the name of the political party. A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(2) If an elector receives his regular absentee ballot after he has voted and mailed a federal write-in absentee ballot, he may vote and return the regular absentee ballot.

History: En. Sec. 1, Ch. 43, L. 1987.

13-13-273. Counting of federal write-in absentee ballots. (1) A federal write-in absentee ballot must be counted if:

(a) the condition in 13-13-271(3) has been met;

(b) the regular absentee ballot has not been received by 8 p.m. election day;

(c) it has not been submitted from any location within the continental United States, Alaska, Hawaii, or Guam; and

(d) it is received by 8 p.m. election day.

(2) Federal write-in absentee ballots received before the close of the polls election day will not be counted until the polls have closed.

History: En. Sec. 1, Ch. 43, L. 1987.

13-13-274 and 13-13-275 reserved.

13-13-276. Legislative findings and purpose. The legislature finds that the increased use of facsimile transmissions has encouraged the possibility of absentee voter registration and the sending and receiving of absentee ballots by facsimile. The legislature also finds that while federal law encourages but does not require the use of facsimile transmissions in federal elections, there are sufficient reliability in facsimile technology and sufficient evidence that absentee facsimile voting would be of benefit to electors in the

United States service, to provide for absentee registration and voting by facsimile. It is the purpose of 13-13-276 through 13-13-279 to allow for absentee voter registration and voting by facsimile, while recognizing that state and local election officials have the responsibility to maintain the accuracy, integrity, and secrecy of the election process and the individual election ballot. It is the purpose of the legislature to allow facsimile voting for electors in the United States service but to continue to ensure that voting security is maintained for the ultimate purpose of preventing election fraud and maintaining the validity of the election process.

History: En. Sec. 1, Ch. 111, L. 1991.

13-13-277. Registration and voting by facsimile authorized. Notwithstanding other provisions of this title, each election administrator may, in any primary election, general election, and special election, take the following acts by facsimile transmission, if facsimile facilities are available, in place of the use of the public mails when requested by an elector or, for the purposes of registration under subsection (1), an individual intending to become an elector, in the United States service, as defined in 13-2-211:

(1) register an individual to vote;
(2) give notice of registration;
(3) receive requests for an absentee ballot;
(4) transmit absentee ballots to electors; and
(5) receive absentee ballots from electors.

History: En. Sec. 2(1), Ch. 111, L. 1991.

13-13-278. Adoption of rules — acceptance of funds. (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement 13-13-277. The rules are binding upon election administrators. The rules must require compliance with the same time requirements or deadlines as for registration and voting by absentee ballot by use of the public mails, except that the rules may provide for different times for the acceptance of facsimile ballots after the closing of the polls. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and must allow registration and voting by facsimile through use of a private corporation or other private entity for transmission of facsimile messages only if the secretary of state finds that the use is essential to the purposes of 13-13-276 through 13-13-279.

(2) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing 13-13-276 through 13-13-279.

History: En. Sec. 2(2), (3), Ch. 111, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Registration by mail, 13-2-203.

Close of registration, 13-2-301.

13-13-279. Advisory council assistance — report to legislature. (1) The secretary of state shall adopt the rules required by 13-13-278(1) with the assistance of the secretary's election administrators advisory council, and the advisory council shall assist and advise the secretary in the implementation of 13-13-276 through 13-13-279.

(2) The secretary of state shall by January 1, 1995, prepare a written report to the legislature concerning the implementation of 13-13-276 through 13-13-279 and the activities of the advisory council in implementing 13-13-276 through 13-13-279. The report must:

(a) include copies of rules adopted by the secretary of state in accordance with 13-13-277 and 13-13-278;

(b) contain a detailed summary of the experience of the secretary of state and local election administrators in implementing 13-13-276 through 13-13-279; and

(c) include any recommendations for changes to the applicable laws.

History: En. Sec. 3, Ch. 111, L. 1991.

Part 3

Challenges

13-13-301. Challenges on election day. (1) An elector's right to vote may be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(2) An individual offering to vote may be orally challenged by any elector of the county upon the following grounds:

(a) that he is not the individual whose name appears on the register;

(b) that he does not reside at the residence listed unless the elector is voting under the provisions of 13-2-512 and 13-2-514;

(c) that he is of unsound mind, as determined by a court;

(d) that he has voted before in that election; or

(e) that he has been convicted of a felony and is serving a sentence in a penal institution.

History: (1)En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; Sec. 23-3015, R.C.M. 1947; (2)En. Sec. 111, Ch. 368, L. 1969; amd. Sec. 33, Ch. 365, L. 1977; Sec. 23-3611, R.C.M. 1947; R.C.M. 1947, 23-3015(3), 23-3611; amd. Sec. 132, Ch. 571, L. 1979.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Challenges prior to election, 13-2-404.

Challenges in school elections, 20-20-303.

Definition of felony, 45-2-101.

Effect of conviction, 46-18-801.

Developmentally disabled individuals, Title 53, ch. 20.

Mentally ill individuals, Title 53, ch. 21.

Persons under disability, guardianship, and conservatorship, Title 72, ch. 5.

13-13-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 27, Init. Act, Nov. 1912; re-en. Sec. 10792, R.C.M. 1921; re-en. Sec. 10792, R.C.M. 1935; Sec. 94-1446, R.C.M. 1947; redes. 23-4746 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 45, Ch. 334, L. 1977; R.C.M. 1947, 23-4746.

13-13-303. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 37, Ch. 368, L. 1969; amd. Sec. 12, Ch. 365, L. 1977; R.C.M. 1947, 23-3018(2).

13-13-304. Duties of election judges in response to challenges. The election judges shall:

(1) test the qualifications of the elector challenged under oath if he applies to vote;

(2) compare the answers of the elector with the entries in the precinct register; and

(3) not permit him to vote if the elector:

(a) is found to be disqualified because the answers given do not correspond to the entry in the precinct register or any transfer form or registration form submitted by the elector;

(b) is disqualified for any cause under the law;

(c) refuses to be sworn and to answer questions touching the matter of residence; or

(d) refuses to take an oath or affirmation as to his qualifications.

History: Ap. p. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; Sec. 23-3015, R.C.M. 1947; Ap. p. Sec. 114, Ch. 368, L. 1969; Sec. 23-3614, R.C.M. 1947; R.C.M. 1947, 23-3015(4), 23-3614; amd. Sec. 134, Ch. 571, L. 1979.

Cross-References

Oath to test voter qualifications, 13-13-306.

13-13-305. Election judges' powers concerning challenges. The election judges may require the challenged elector to produce one or more electors of the county to be examined under oath as to the qualifications of the challenged elector and may also request assistance from the county attorney and the registrar in determining the elector's qualifications.

History: En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; R.C.M. 1947, 23-3015(5).

13-13-306. Proceedings pursuant to challenges — oaths. (1) If the challenge is on the ground that the individual is not the elector whose name appears on the official register, the election judges shall administer the following oath: "I, ... (name of elector), do swear (or affirm) that I am the individual whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the individual does not reside at the residence listed, the judges shall administer this oath: "I, ... (name of elector), do swear (or affirm) that I reside at ...... (state precise address), which is the address listed on the official register."

(3) If the challenge is on the ground that the individual has voted before in that election, the judges shall administer this oath: "I, ... (name of elector), do swear (or affirm) that I have not voted before in this election."

(4) If the challenge is on the ground that the individual has been convicted of a felony and is serving a sentence in a penal institution, the judges shall administer the following oath: "I, ... (name of elector), do swear (or affirm) either that I have not been convicted of a felony or that, if I have been convicted of a felony, I am not serving a sentence in a penal institution."

(5) The election judges may administer any other oath relating to the individual's qualification to vote that they feel necessary.

History: En. Sec. 112, Ch. 368, L. 1969; amd. Sec. 34, Ch. 365, L. 1977; R.C.M. 1947, 23-3612; amd. Sec. 135, Ch. 571, L. 1979.

Cross-References

Duty to administer oaths, 13-13-304.

Criminal provisions relating to illegal voting, 13-35-210.

Oath for challenges at school elections, 20-20-303.

13-13-307. Determination of challenges. Challenges are determined in favor of the individual challenged by his taking the oath tendered.

History: En. Sec. 113, Ch. 368, L. 1969; amd. Sec. 35, Ch. 365, L. 1977; R.C.M. 1947, 23-3613; amd. Sec. 136, Ch. 571, L. 1979.

13-13-308. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 115, Ch. 368, L. 1969; R.C.M. 1947, 23-3615.

13-13-309. Proceedings after determination of challenge. If the challenge is determined against the individual offering to vote, the individual may not be allowed to receive a ballot or vote by any other means and the precinct register shall be so marked. If determined in favor of the individual offering to vote, he shall be allowed to vote.

History: En. Sec. 116, Ch. 368, L. 1969; R.C.M. 1947, 23-3616; amd. Sec. 137, Ch. 571, L. 1979.

13-13-310. List of challenges to be kept. The election judges shall keep a list showing:

(1) the names of all individuals challenged;
(2) the name of the elector or judge offering the challenge, if known;
(3) the grounds of each challenge;
(4) the determination of the election judges upon the challenge.

History: En. Sec. 117, Ch. 368, L. 1969; R.C.M. 1947, 23-3617; amd. Sec. 138, Ch. 571, L. 1979.

13-13-311. Vote by challenged elector. (1) Whenever an individual's right to vote at an election is challenged under 13-2-404 or 13-13-301 and the challenge has been determined in favor of the individual challenged as provided in 13-13-307, an election judge shall write in the pollbook at the end of the individual's name the words "challenged and sworn", with the name of the challenger, if known. The elector so challenged must be allowed to vote. The election judge shall then write upon the back of the ballot offered by the challenged elector the number of his ballot. The ballot may be cast out if it appears to the court to have been for any reason wrongfully or illegally voted.

(2) Placing information on a ballot or pollbook under the provisions of subsection (1) or of 13-13-204(2) or divulging such information in a legal proceeding subsequent to the election does not constitute a violation of 13-35-202 or 13-35-207.

History: En. Sec. 133, Ch. 571, L. 1979; amd. Sec. 12, Ch. 298, L. 1987.

Cross-References

Criminal provisions relating to illegal voting, 13-35-210.

CHAPTER 14

NONPARTISAN ELECTIONS

Part 1 — General Provisions

13-14-101 through 13-14-104. Repealed.
13-14-105 through 13-14-110 reserved.
13-14-111. Application of general laws.
13-14-112. Declarations for nomination — fee.
13-14-113. Filing for offices without salary or fees.
13-14-114. Register of candidates.
13-14-115. Preparation and distribution of nonpartisan primary ballots.
13-14-116. Counting and canvassing of nonpartisan ballots.
13-14-117. Placing names on ballots for general election.
13-14-118. Vacancies among nominees after nomination and before general election.

Part 2 — Judicial Offices

13-14-201 through 13-14-208. Repealed.
13-14-209 and 13-14-210 reserved.
13-14-211. Judicial offices separate and independent offices for election purposes.
13-14-212. Form of ballot on retention of certain incumbent judicial officers.
13-14-213. Form of ballot on retention for other judicial offices.

Chapter Cross-References

Vacancy in Judicial Nomination Commission, 3-1-1014.

Election of Supreme Court Justices, Title 3, ch. 2, part 1.

Election of Clerk of Supreme Court, 3-2-401.

Election of City Judge, 7-3-1342, 7-3-4462.

Vacancy on Board of County Commissioners, 7-4-2106.

Vacancy in county office, 7-4-2206.

Definitions applicable to this chapter, 13-1-101.

Part 1
General Provisions

Part Cross-References

Nonpartisan elections — local government, 7-3-219, 7-3-314, 7-3-413, 7-3-513, 7-3-603, 7-3-704.

Election of officials of commission-manager government, 7-3-4341.

13-14-101 through 13-14-104. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-14-101. (1), (2)En. Sec. 225, Ch. 368, L. 1969; Sec. 23-4501, R.C.M. 1947; (3)En. Sec. 230, Ch. 368, L. 1969; Sec. 23-4506, R.C.M. 1947; R.C.M. 1947, 23-4501, 23-4506(3).

13-14-102. En. Sec. 226, Ch. 368, L. 1969; R.C.M. 1947, 23-4502.

13-14-103. En. Sec. 227, Ch. 368, L. 1969; R.C.M. 1947, 23-4503.

13-14-104. En. Sec. 228, Ch. 368, L. 1969; R.C.M. 1947, 23-4504.

13-14-105 through 13-14-110 reserved.

13-14-111. Application of general laws. Candidates for nonpartisan offices, including judicial offices, shall be nominated and elected according to the provisions of this title except as otherwise provided in this chapter.

History: En. Sec. 139, Ch. 571, L. 1979.

13-14-112. Declarations for nomination — fee. (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113.

(2) Declarations may not indicate political affiliation. The candidate may not state in his declaration any principles or measures he advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the position he seeks.

(4) Declarations shall be filed in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201. Time of filing shall be the same as provided in 13-10-201.

History: En. Sec. 140, Ch. 571, L. 1979.

Cross-References

Declaration for nomination for primary election, 13-10-201.

Filing fees, 13-10-202.

13-14-113. Filing for offices without salary or fees. (1) Candidates for nonpartisan offices for which no salary or fees are paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but in no case may it be less than five signatures.

(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election shall be determined by the secretary of state.

(4) Petitions for nomination shall be filed at the same time provided in 13-10-201 for other candidates and offices.

History: En. Sec. 141, Ch. 571, L. 1979.

Cross-References

Election of urban transportation district board, 7-14-214.

Election of board of trustees of fire district, 7-33-2106.

Election of board of trustees for hospital district, 7-34-2116.

Declaration of nomination, 13-10-201.

13-14-114. Register of candidates. On receipt of a declaration or petition, the secretary of state or election administrator shall, if a register is kept, make an entry in the register of candidates for nomination, on a page different from entries made for candidates of political parties.

History: En. Sec. 142, Ch. 571, L. 1979; amd. Sec. 2, Ch. 99, L. 1987.

Cross-References

Primary elections and nominations — register of candidates, 13-10-205.

13-14-115. Preparation and distribution of nonpartisan primary ballots. (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". They shall be arranged as other primary ballots and be without political designation.

(2) The number of nonpartisan primary ballots and sample ballots furnished shall be the same as other primary ballots.

(3) (a) The election administrator of a political subdivision may determine that a primary need not be held if:

(i) the number of candidates for an office exceeds twice the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of twice the number to be elected is not more than one for any office on the ballot.

(b) If the election administrator determines that a primary need not be held pursuant to subsection (3)(a), he must give notice to the governing body that no primary election will be held.

(4) The governing body may require that a primary election be held if it passes a resolution not more than 10 days after the close of filing by candidates for election, stating that a primary election shall be held.

History: (1), (2)En. Sec. 143, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 359, L. 1979; amd. Sec. 1, Ch. 123, L. 1985; amd. Sec. 13, Ch. 591, L. 1991.

Cross-References

Duties of officials when election not held, 13-1-304.

Arrangement of primary ballots, 13-10-209.

13-14-116. Counting and canvassing of nonpartisan ballots. (1) After closing the polls, the election officers shall separately count, canvass, record, and certify nonpartisan ballots, showing the number of votes cast for each person, except as provided in 13-15-202.

(2) Nonpartisan ballots, stubs, and unused ballots must be disposed of in the same manner as other ballots, stubs, and unused ballots. Returns must be made as provided by law.

History: En. Sec. 144, Ch. 571, L. 1979; amd. Sec. 3, Ch. 391, L. 1989.

Cross-References

Disposition of ballots, 13-1-303, 13-15-205.

Declaration of intent for write-in candidates, 13-10-211.

Election returns, 13-15-101.

13-14-117. Placing names on ballots for general election. Candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

History: En. Sec. 145, Ch. 571, L. 1979.

13-14-118. Vacancies among nominees after nomination and before general election. (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 75 days before the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office shall be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) shall be certified and printed on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than 75 days before the general election and no qualified individual is elected to the office at the general election, the office shall be vacant and shall be filled as provided by law.

History: En. Sec. 146, Ch. 571, L. 1979; amd. Sec. 33, Ch. 250, L. 1985.

Part 2

Judicial Offices

Part Cross-References

The judiciary — constitutional provisions, Art. VII, Mont. Const.

Selection of judicial officers, Art. VII, sec. 8, Mont. Const.

Supreme Court Justices — qualifications, Art. VII, sec. 9, Mont. Const.; 3-2-102.

District Court Judges — qualifications, Art. VII, sec. 9, Mont. Const.; 3-5-202.

Forfeiture of judicial position on filing for nonjudicial elective office, Art. VII, sec. 10, Mont. Const.

Resignation of judge required prior to becoming candidate for another public office, 3-1-607, 3-1-608.

Vacancy on Supreme or District Court, Title 3, ch. 1, part 10.

Election of Justices of the Peace, 3-10-201.

Unlawful for political party to endorse judicial candidate, 13-35-231.

13-14-201 through 13-14-208. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-14-201. En. Sec. 229, Ch. 368, L. 1969; R.C.M. 1947, 23-4505.

13-14-202. En. Sec. 230, Ch. 368, L. 1969; R.C.M. 1947, 23-4506(1), (2).

13-14-203. En. Sec. 231, Ch. 368, L. 1969; R.C.M. 1947, 23-4507.

13-14-204. En. Sec. 232, Ch. 368, L. 1969; R.C.M. 1947, 23-4508.

13-14-205. En. Sec. 233, Ch. 368, L. 1969; R.C.M. 1947, 23-4509.

13-14-206. En. Sec. 234, Ch. 368, L. 1969; R.C.M. 1947, 23-4510.

13-14-207. En. Sec. 1, Ch. 22, L. 1973; R.C.M. 1947, 23-4510.1.

13-14-208. En. Sec. 2, Ch. 22, L. 1973; R.C.M. 1947, 23-4510.2.

13-14-209 and 13-14-210 reserved.

13-14-211. Judicial offices separate and independent offices for election purposes. (1) Each vacancy for justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the justices and certify these numbers to the office of the secretary of state.

(2) Each vacancy for judicial office in a district which has more than one district judge is a separate and independent office for election purposes.

(3) Each vacancy for office in a county which has more than one justice of the peace is a separate and independent office for election purposes.

History: En. Sec. 147, Ch. 571, L. 1979.

Cross-References

Vacancies on Supreme and District Court, Title 3, ch. 1, part 10.

Justice of the Peace as separate and independent office, 3-10-201.

13-14-212. Form of ballot on retention of certain incumbent judicial officers. In the event there is no candidate other than the incumbent for the office of chief justice, supreme court justice, district court judge, or justice of the peace, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the official to remain in office. Mark an "x" before the word "NO" if you do not wish the official to remain in office.)

History: En. Sec. 148, Ch. 571, L. 1979.

Cross-References

Justices of the Peace elected in same manner as District Court Judge, 3-10-201.

13-14-213. Form of ballot on retention for other judicial offices. The election administrator or secretary of state shall use the form prescribed in 13-14-212 to place the name of an unopposed incumbent for a judicial office on the general election ballot if such office is subject to the provisions of Article VII, Section 8, of The Constitution of the State of Montana.

History: En. Sec. 149, Ch. 571, L. 1979.

CHAPTER 15

CANVASSING, RETURNS, AND CERTIFICATES

Part 1 — General Provisions

13-15-101. Votes to be publicly counted upon closing of polls.
13-15-102. Defect in form of returns to be disregarded.
13-15-103. Counting board.
13-15-104. Counting board for absentee ballots.
13-15-105. Notices relating to counting board for absentee ballots.
13-15-106 through 13-15-110 reserved.
13-15-111. Write-in elections — general election.

Part 2 — Procedure for Canvass

13-15-201. Preparation for count.
13-15-202. Counting votes cast — pollbook.
13-15-203. Marking rejected ballots.
13-15-204. Signing and certifying pollbook.
13-15-205. Items to be delivered to election administrator by election judges — disposition of other items.

Part 3 — Registrar's Duties

13-15-301. Disposition of items by election administrator.
13-15-302. Repealed.

Part 4 — County Canvass

13-15-401. County governing body as board of county canvassers.
13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass.
13-15-403. Canvass to be public — nonessentials to be disregarded — petition for recount.
13-15-404. Information to be entered on record.
13-15-405. Declaration or certification of results.
13-15-406. Certificates to be issued by the election administrator.

Part 5 — State Canvass

13-15-501. Certification of canvass to state canvassers.
13-15-502. Composition and meeting of board of state canvassers.
13-15-503. Notification if returns not received from counties.
13-15-504. Governor to issue commissions.
13-15-505. Canvass to be public — procedure.
13-15-506. Report of the canvass.
13-15-507. Declaration, proclamation, and certification of results.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Criminal acts relating to canvassing, returns, and certificates, Title 13, ch. 35.

School elections, Title 20, ch. 20.

Part 1
General Provisions

13-15-101. Votes to be publicly counted upon closing of polls. (1) When the polls are closed, the election judges shall immediately count the votes. The count shall be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately post one of the return forms at the place of counting and return a copy to the election administrator. Both forms shall be signed by all the election judges completing the count.

History: En. Secs. 88, 171, Ch. 368, L. 1969; R.C.M. 1947, 23-3505, 23-4001; amd. Sec. 151, L. 1979; amd. Sec. 1, Ch. 100, L. 1987; amd. Sec. 13, Ch. 298, L. 1987.

Cross-References

Disposition of return form, 13-15-205.

13-15-102. Defect in form of returns to be disregarded. No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

History: En. Sec. 189, Ch. 368, L. 1969; R.C.M. 1947, 23-4019.

13-15-103. Counting board. (1) In any precinct where a counting board has been appointed in addition to the regular board of election judges, the counting board shall meet at a place designated by the election administrator.

(2) The election administrator may provide duplicate boxes for voted ballots and duplicate pollbooks at any precinct for which a counting board has been appointed and may arrange for the counting board to begin the count of the votes cast before the polls close. The counting board shall be sequestered in a separate room from where the ballots are being cast until after the polls close. Any individual observing the counting board procedures must be sequestered with the board until after the polls close. The counting board shall proceed by counting all ballots in the first box and then that box and pollbook shall be exchanged for the second box and duplicate pollbook. The board shall continue counting until the votes cast for all candidates and issues are counted. The election administrator may appoint an extra election judge to act as a marshal to be responsible for exchanging ballot boxes and pollbooks and enforcing sequestering of the board and observers.

(3) The election administrator may have the counting board for a precinct begin work as soon as the polls close instead of using the procedure outlined in subsection (2).

(4) In a county where voting devices are used, the election administrator may make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls. The ballots may be processed and

counted as they are received, but the results of this early count may not be released to the public until after all the polls are closed.

(5) No election judge or other individual having access to the information may disclose any results of early counting while the polls are open.

History: En. Sec. 150, Ch. 571, L. 1979.

Cross-References

Appointment of Counting Board, 13-4-101.

Violation of duty as official misconduct, 13-35-204.

13-15-104. Counting board for absentee ballots. (1) The election administrator shall:

(a) give special instructions to any counting board for absentee ballots appointed under 13-4-101 on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The counting board for absentee ballots shall:

(a) be sequestered in a room separate from where ballots are being cast;

(b) at any time prior to the closing of the polls but not before the polls open, start the count of the absentee votes cast; and

(c) follow the procedures outlined in 13-13-241 and 13-15-103 for the counting of the votes cast.

(3) No election judge or other individual having access to any results of early counting may disclose the information while the polls are open, and he must remain sequestered until the closing of the polls.

(4) (a) In addition to the official oath taken and subscribed to by the election judges, the members of the counting board for absentee ballots shall complete and sign the following affirmation: "I, ..., will not discuss or disclose or allow anyone else to discuss or disclose to anyone the results of the early counting of votes while the polls are open."

(b) The chief election judge shall witness and sign the affirmation.

History: En. Sec. 5, Ch. 120, L. 1983; amd. Sec. 14, Ch. 298, L. 1987.

Cross-References

Procedure for electors absent from polling place, Title 13, ch. 13, part 2.

13-15-105. Notices relating to counting board for absentee ballots. Whenever a counting board for absentee ballots is appointed under 13-4-101, the election administrator shall:

(1) publish in the contracted newspaper of the county as provided in 7-5-2411 a notice indicating that such a method will be used for counting absentee ballots;

(2) post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time the counting board for absentee ballots will meet on election day. The notice must inform the public that any person observing the procedures of the counting board must be sequestered with the board until the polls are closed and the counting board is released and must take the oath provided in 13-15-104.

History: En. Sec. 6, Ch. 120, L. 1983.

Cross-References

Procedure for electors absent from polling place, Title 13, ch. 13, part 2.

13-15-106 through 13-15-110 reserved.

13-15-111. Write-in elections — general election. (1) An individual elected by having his name written in at the general election and receiving the largest number of votes shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating his acceptance of the position for which he was elected;

(b) comply with the provisions of 13-37-225; and

(c) pay the required filing fee or, if indigent, comply with 13-10-203.

(2) If an individual fails to file the declaration as required under subsection (1)(a), he may not assume the position for which he was elected.

History: En. Sec. 4, Ch. 298, L. 1987; amd. Sec. 14, Ch. 591, L. 1991.

Part 2

Procedure for Canvass

13-15-201. Preparation for count. (1) To begin the count after the close of the polls, the election judges shall take ballots out of the box unopened to determine whether each ballot is single.

(2) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the pollbook.

(3) If they cannot reconcile the total number of ballots with the pollbook they must submit a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. All judges must sign the report.

(4) A ballot which is not endorsed by the official stamp is void and may not be counted unless the judges agree the stamp is missing because of their error. Such ballot shall be marked "unstamped by error" on the back and must be initialed by all judges.

(5) If two or more ballots are folded together to look like a single ballot, they shall be laid aside until the count is complete. The election judges shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, they must be rejected; otherwise they must be counted.

History: En. Sec. 172, Ch. 368, L. 1969; R.C.M. 1947, 23-4002; amd. Sec. 152, Ch. 571, L. 1979.

13-15-202. Counting votes cast — pollbook. (1) (a) When the procedures required by 13-15-201 are completed, the election judges shall count and determine the votes cast for each individual, except as provided in subsection (1)(b).

(b) The judges may not count or record write-in votes for candidates who have not filed a declaration of intent as provided in 13-10-211, except for write-in votes cast:

(i) for the office of precinct committeeman or committeewoman in a primary election;

(ii) for an office for which no candidate has filed a declaration or petition for nomination or a declaration of intent; or

(iii) on a federal write-in absentee ballot as provided in 13-13-273.

(2) In counting, the ballots shall be opened singly by one of the election judges and the contents read aloud to the other judges.

(3) A ballot or part of a ballot is void and shall not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part.

(4) As the ballots are read, two judges must write on a tally sheet the name of every individual and the office voted for and keep tallies of the number of votes for each individual, except as provided in subsection (1)(b).

(5) The tally sheets shall be compared and their correctness ascertained, and the judges shall immediately write in the pollbook:

(a) the names of all individuals who received votes;

(b) the offices for which they received votes;

(c) total votes received by each individual as shown by the tally sheets.

(6) In making the count in precincts where voting machines are used, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

(7) A ballot or vote rejected by the election judges may not be included in the count.

History: En. Secs. 134, 173, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(3), 23-4003; amd. Sec. 153, Ch. 571, L. 1979; amd. Sec. 4, Ch. 391, L. 1989.

Cross-References

Declaration of intent for write-in candidates, 13-10-211.

Presumption of incorrectness raised by failure to comply with this section, 13-16-303.

13-15-203. Marking rejected ballots. A ballot rejected for illegality shall be marked by the election judges by writing across the face, "rejected on the ground of ....", filling the blank with a brief statement of the reasons for the rejection. The statement shall be dated and signed by a majority of the judges.

History: En. Sec. 174, Ch. 368, L. 1969; R.C.M. 1947, 23-4004.

13-15-204. Signing and certifying pollbook. Immediately after the votes are counted and the ballots sealed up, the pollbook shall be signed and certified to by the election judges in a form prescribed by the secretary of state.

History: En. Sec. 175, Ch. 368, L. 1969; R.C.M. 1947, 23-4005; amd. Sec. 154, Ch. 571, L. 1979.

13-15-205. Items to be delivered to election administrator by election judges — disposition of other items. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

(a) the precinct register;

(b) the list of individuals challenged;

(c) the pollbook;

(d) both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed, all ballots voted, including those not counted or allowed, and

detached stubs from all counted or rejected absentee ballots. This envelope shall be endorsed on the outside "ballots voted". At the primary election the unvoted party ballots shall be enclosed in a separate package or envelope, securely sealed, and marked on the outside "unvoted ballots".

(4) Each election judge shall write his name across all seals.

(5) The return form provided for in 13-15-101 shall be returned with the items provided for in this section but may not be sealed in any of the packages.

(6) The envelopes or packages required by this section shall be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies.

History: En. Sec. 176, Ch. 368, L. 1969; R.C.M. 1947, 23-4006; amd. Sec. 155, Ch. 571, L. 1979.

Part 3

Registrar's Duties

13-15-301. Disposition of items by election administrator. (1) The election administrator shall file the envelopes or packages containing the precinct registers, pollbooks, tally sheets, certificates of registration, and oaths of election officers. He shall keep them unopened until the county board of canvassers meets to canvass the returns. The board shall open the envelopes or packages.

(2) Immediately after the returns are canvassed, the election administrator shall file the pollbooks, election records, and the papers delivered to the board of canvassers with the unopened packages of ballots and ballot stubs.

History: En. Sec. 177, Ch. 368, L. 1969; amd. Sec. 1, Ch. 100, L. 1974; R.C.M. 1947, 23-4007; amd. Sec. 156, Ch. 571, L. 1979.

Cross-References

Election records open to public, 13-1-109.

13-15-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 178, Ch. 368, L. 1969; R.C.M. 1947, 23-4008.

Part 4

County Canvass

13-15-401. County governing body as board of county canvassers. (1) The governing body of a county, consolidated, or confederated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the governing body within 3 days after each election, at 8 a.m., to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, his place shall be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county, consolidated, or confederated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of his office.

History: En. Sec. 179, Ch. 368, L. 1969; R.C.M. 1947, 23-4009; amd. Sec. 157, Ch. 571, L. 1979.

Cross-References

County officers, 7-4-2203.

13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

(3) If the returns from an election precinct have not been received by the election administrator within 3 days after an election, he shall immediately advise the chief election judge.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the election administrator. The election administrator shall enter the certification in the minutes and in the record required by 13-15-404.

History: En. Sec. 180, Ch. 368, L. 1969; R.C.M. 1947, 23-4010; amd. Sec. 158, Ch. 571, L. 1979.

13-15-403. Canvass to be public — nonessentials to be disregarded — petition for recount. (1) The canvass shall be public. It shall proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or because of failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

(4) If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in 13-16-201, or for an inspection of ballots, as provided in 13-16-420.

History: En. Sec. 181, Ch. 368, L. 1969; amd. Sec. 44, Ch. 365, L. 1977; R.C.M. 1947, 23-4011; amd. Sec. 159, Ch. 571, L. 1979; amd. Sec. 1, Ch. 19, L. 1987; amd. Sec. 15, Ch. 591, L. 1991.

13-15-404. Information to be entered on record. (1) The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; and

(f) for municipal elections, the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual shall be entered in the report in the same place as the votes for other individuals for the same office but shall be identified as write-in votes.

History: En. Sec. 182, Ch. 368, L. 1969; R.C.M. 1947, 23-4012; amd. Sec. 160, Ch. 571, L. 1979; amd. Sec. 2, Ch. 70, L. 1983.

Cross-References

Election Administrator as secretary of Board of County Canvassers, 13-15-401.

13-15-405. Declaration or certification of results. (1) The board shall declare nominated or elected the individuals having the highest number of votes cast for each county and precinct office, except as provided in 13-10-204.

(2) The board shall proclaim the adoption or rejection of a county ballot issue.

(3) The board shall certify the results of the canvass of votes cast for individuals for political subdivision offices and for and against political subdivision ballot issues to the governing body of each political subdivision participating in the election.

(4) If there is a tie vote for a county office, an office of a political subdivision wholly within the county, a precinct office, or a ballot issue voted on only in that county or portion of that county, the board shall certify the vote to the election administrator.

(5) The board shall certify the results of the canvass of votes cast for justice of the peace, city judge, and municipal court judge to the supreme court in order to ensure compliance with 3-1-1502 or 3-1-1503.

History: En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(1), 23-4103(5); amd. Sec. 161, Ch. 571, L. 1979; amd. Sec. 6, Ch. 317, L. 1991.

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

County abandonment and consolidation elections, 7-2-2712.

Recount for tie vote, 13-16-203.

13-15-406. Certificates to be issued by the election administrator. The election administrator shall, except as provided in 13-37-127, deliver a certificate of nomination or election to each individual declared elected by the board.

History: En. Sec. 184, Ch. 368, L. 1969; amd. Sec. 46, Ch. 365, L. 1977; R.C.M. 1947, 23-4014; amd. Sec. 162, Ch. 571, L. 1979.

Part 5

State Canvass

13-15-501. Certification of canvass to state canvassers. (1) The board of county canvassers shall certify the vote for each individual for whom votes were cast for the offices of president and vice president of the United States, congressional offices, state or district offices voted for in more than one county, members of the legislature, judges of the district court, and for and against ballot issues voted on in more than one county to the board of state canvassers. The certification shall contain all the information required in 13-15-404 for such candidates and issues.

(2) The secretary of the board shall send the certification to the secretary of state by certified mail in an envelope marked "election returns".

History: En. Sec. 185, Ch. 368, L. 1969; amd. Sec. 47, Ch. 365, L. 1977; R.C.M. 1947, 23-4015; amd. Sec. 163, Ch. 571, L. 1979.

Cross-References

County abandonment and consolidation elections, 7-2-2712.

Election Administrator as secretary of County Board, 13-15-401.

Determination of results of ballot issues, 13-27-503.

13-15-502. Composition and meeting of board of state canvassers. Within 20 days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state shall serve as secretary of the board, keep minutes of the meeting of the board, and file them in the official records of his office.

History: En. Sec. 186, Ch. 368, L. 1969; amd. Sec. 21, Ch. 365, L. 1977; R.C.M. 1947, 23-4016; amd. Sec. 164, Ch. 571, L. 1979.

Cross-References

Board of Canvassers allocated to office of Secretary of State, 2-15-412.

13-15-503. Notification if returns not received from counties. If the returns from all counties have not been received 3 days before the meeting of the board of state canvassers, the secretary of state shall immediately advise the election administrator of each delinquent county.

History: En. Sec. 187, Ch. 368, L. 1969; R.C.M. 1947, 23-4017; amd. Sec. 165, Ch. 571, L. 1979.

13-15-504. Governor to issue commissions. Upon receipt of the statements required by 13-15-507 and 13-37-127, the governor shall issue commissions to the individuals elected. If the governor has been elected to succeed himself, the secretary of state shall issue the commission.

History: En. Sec. 188, Ch. 368, L. 1969; R.C.M. 1947, 23-4018; amd. Sec. 169, Ch. 571, L. 1979.

Cross-References

Certificates issued by Governor in congressional elections, 13-25-204.

13-15-505. Canvass to be public — procedure. (1) The canvass shall be public. It shall proceed by opening the returns from each county, auditing the records from each county for errors, determining the vote for each individual and for and against each ballot issue in each county, compiling totals, and declaring and certifying the results.

(2) The board shall record all write-in votes shown in the returns received from each county.

History: En. Sec. 166, Ch. 571, L. 1979.

13-15-506. Report of the canvass. (1) The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:

(a) the total number of electors voting in each county and in each legislative house district and the total in the state;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue; and

(d) the votes by county and legislative house district and the total votes for each individual and for and against each ballot issue.

(2) Write-in votes for an individual shall be entered in the report in the same place as votes of other individuals for the same office but shall be identified as write-in votes.

History: En. Sec. 167, Ch. 571, L. 1979.

Cross-References

Secretary of State as secretary of State Board, 13-15-502.

13-15-507. Declaration, proclamation, and certification of results. The board shall declare nominated or elected the individual having the highest number of votes cast for each office, except as provided in 13-10-204. The board shall proclaim the adoption or rejection of ballot issues. Certified copies of the report required in 13-15-506, the declaration of nominated or elected individuals, the proclamation of adoption or rejection of ballot issues, and the effective date of adopted ballot issues shall be delivered to the governor.

History: En. Sec. 168, Ch. 571, L. 1979.

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

Secretary of State to certify names of persons receiving highest number of votes for offices commissioned by the Governor, 2-15-401.

CHAPTER 16

RECOUNTS AND TIE VOTES

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13-16-403. Renumbered 13-16-417 by Code Commissioner, 1979.
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13-16-406 through 13-16-410 reserved.
13-16-411. Individuals entitled to appear at recount — opening and recount of ballots.
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13-16-501. Tie vote after recount.
13-16-502. Tie vote in election for United States congress.
13-16-503. Tie vote in election for supreme court justice, district court judge, or state legislator.
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13-16-505. Tie vote in election for county commissioner.
13-16-506. Tie vote in election for other county officers.
13-16-507. Tie vote in election for officers of nonspecified political subdivision.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Disposition of ballots and other election materials, 13-1-303.

Part 1

County Recount Board

13-16-101. County governing body as county recount board. (1) The county recount board shall consist of three members.

(2) Three members of the governing body shall be appointed by the chairman if there are more than three members of the governing body.

(3) If three members of the governing body cannot attend when the board meets, any vacant place shall be filled by one or more county officers chosen by the remaining members of the governing body.

(4) If a member of the recount board is a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The election administrator is secretary of the recount board, and the board may hire any additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed.

History: **En. Sec. 203, Ch. 368, L. 1969; R.C.M. 1947, 23-4114; amd. Sec. 170, Ch. 571, L. 1979.**

Cross-References

County officers, 7-4-2203.

Expenses of recount, 13-16-205.

Part 2

Recounts in Close Elections

13-16-201. Conditions under which recount to be made. A recount shall be made under any of the following conditions:

(1) If a candidate for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, he may, within 5 days after the official canvass, file with the election administrator a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file a petition with the secretary of state as set forth in subsection (1). The secretary of state shall immediately notify each election administrator whose county includes any precincts which voted for the same office by certified or registered mail, and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(4) If a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(5) If a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(6) The secretary of state shall immediately notify each election administrator by certified mail of the filing of the petition, and a recount shall be conducted in all precincts in each county.

(7) If during a canvass of election returns a board of county canvassers finds an error, as provided in 13-15-403, the board immediately may file a petition with the election administrator.

History: **En. Sec. 192, Ch. 368, L. 1969; amd. Sec. 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4103(1) thru (4); amd. Sec. 171, Ch. 571, L. 1979; amd. Sec. 2, Ch. 19, L. 1987.**

13-16-202. Determining total vote cast for all candidates for an office. When an elector may vote for two or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: **En. Sec. 202, Ch. 368, L. 1969; R.C.M. 1947, 23-4113.**

13-16-203. Recount for tie votes. When a tie has been certified to the election administrator, as provided in 13-15-405(4), or the secretary of state, he shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie shall be resolved as provided by law.

History: **En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(2), 23-4103(6); amd. Sec. 172, Ch. 571, L. 1979; amd. Sec. 49, Ch. 575, L. 1981.**

Cross-References

Procedure in case of tie vote, Title 13, ch. 16, part 5.

13-16-204. Meeting of recount board when recount requested. (1) Immediately upon receiving a petition for a recount or a notice from the secretary of state that a petition has been filed with him, as provided in 13-16-201, the election administrator shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the governing body without undue delay but not later than 5 days after receiving notice from the election administrator.

History: **En. Sec. 204, Ch. 368, L. 1969; R.C.M. 1947, 23-4115; amd. Sec. 173, Ch. 571, L. 1979; amd. Sec. 3, Ch. 19, L. 1987.**

13-16-205. Expenses of recount. The expense of the recount provided for in 13-16-201 is a county charge. Recount expenses of the secretary of state and board of state canvassers are a state charge.

History: **En. Sec. 211, Ch. 368, L. 1969; R.C.M. 1947, 23-4122; amd. Sec. 50, Ch. 575, L. 1981.**

13-16-206 through 13-16-210 reserved.

13-16-211. Recounts allowed if bond posted to cover all costs. (1) If a candidate for a public office is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file with the officer with whom his declaration or petition for nomination was filed a petition stating that he believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the clerk and recorder of the county in which he resides. The bond must be in an amount

set by the clerk and recorder sufficient to cover all costs of the recount incurred by each county in which a recount is sought, including loss of time of regular employees caused by absence from their regular duties.

(3) Upon the filing of a petition and posting of a bond under this section, the board of county canvassers in each county affected shall meet and recount the ballots specified in the petition.

History: En. Sec. 1, Ch. 395, L. 1979.

Part 3
Recounts Under Court Order

13-16-301. Application and court order for recount. (1) (a) Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the county recount board to make a recount of the votes cast in any or all of the precincts. If the election was held in more than one county, the application shall be made to the district court of the county where the candidate resides.

(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where he resides for an order directing the appropriate county recount board to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within 5 days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant or the ballot issue were not correctly counted, he shall order the appropriate county recount board to assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

History: En. Sec. 190, Ch. 368, L. 1969; R.C.M. 1947, 23-4101; amd. Sec. 174, Ch. 571, L. 1979.

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

13-16-302. Service of copy of application — hearing. The candidate found to be elected as a result of the original or first canvass shall be served with a copy of the application for recount. He shall be given an opportunity to be heard and shall be permitted to be present and to be represented at any recount ordered.

History: En. Sec. 199, Ch. 368, L. 1969; R.C.M. 1947, 23-4110.

13-16-303. Presumption of incorrectness from failure to comply with provisions for counting votes. If it appears from a verified application that the election judges failed to comply with the provisions of 13-15-202, that is sufficient cause for believing that the election judges did not correctly ascertain the number of votes cast for the applicant or ballot issue.

History: En. Sec. 193, Ch. 368, L. 1969; R.C.M. 1947, 23-4104; amd. Sec. 175, Ch. 571, L. 1979.

13-16-304. Ordering in another judge — jurisdiction. (1) If the judge of the district court in which the application is filed is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time but shall retain jurisdiction until the cause is finally determined and the final count is made by the county recount board.

History: En. Sec. 194, Ch. 368, L. 1969; R.C.M. 1947, 23-4105; amd. Sec. 176, Ch. 571, L. 1979.

13-16-305. Limitation of recount to certain counties or precincts. (1) If the application asks for a recount in more than one county or precinct but there are not sufficient grounds for a recount in all counties or precincts, the court shall order a recount in only the counties or precincts for which sufficient grounds are stated and shown.

(2) The county recount board shall recount votes only in those counties or precincts and for those offices or ballot issues specified in the court order.

History: En. Secs. 191, 195, Ch. 368, L. 1969; R.C.M. 1947, 23-4102, 23-4106; amd. Sec. 177, Ch. 571, L. 1979.

13-16-306. Procedure when more than one application for recount. If more than one candidate makes application for a recount, the court may consider the applications together. The court may make separate or joint orders on the applications and apportion the expenses between the applicants.

History: En. Sec. 197, Ch. 368, L. 1969; R.C.M. 1947, 23-4108.

13-16-307. Expenses of court-ordered recount. (1) The court shall in its order determine the probable expense of making the recount, and the applicant or applicants asking for the recount shall deposit with the board the amount determined, in cash.

(2) If the recount shows that an applicant has been elected to office, the deposit of the applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant.

(4) If the recount reverses the results of a ballot issue election, the deposit of the applicant shall be returned to him.

(5) If the recount does not reverse the results of a ballot issue election and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant.

History: En. Sec. 196, Ch. 368, L. 1969; R.C.M. 1947, 23-4107; amd. Sec. 178, Ch. 571, L. 1979.

Part 4
Recount Procedure

13-16-401. Renumbered 13-16-411 by Code Commissioner, 1979.

13-16-402. Renumbered 13-16-412 by Code Commissioner, 1979.

13-16-403. Renumbered 13-16-417 by Code Commissioner, 1979.

13-16-404. Renumbered 13-16-418 by Code Commissioner, 1979.

13-16-405. Renumbered 13-16-419 by Code Commissioner, 1979.

13-16-406 through 13-16-410 reserved.

13-16-411. Individuals entitled to appear at recount — opening and recount of ballots. (1) Representatives of the news media may be present at the recount. The recount shall be public, but the audience may be limited to prevent interference with the procedures.

(2) Each candidate involved in a recount may appear, personally or by representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(3) If the recount is upon a ballot issue, one qualified elector favoring each side of the question may be present and represent his side.

(4) The recount shall proceed as provided in 13-16-412 and as expeditiously as possible until completed.

History: En. Sec. 205, Ch. 368, L. 1969; R.C.M. 1947, 23-4116(1), (2), (4); amd. Sec. 179, Ch. 571, L. 1979; Sec. 13-16-401, MCA 1979; redes. 13-16-411 by Code Commissioner, 1979.

13-16-412. Procedure for recounting paper ballots. The county recount board in recounting the ballots shall count, at the same time, the votes cast in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:

(1) The election administrator shall produce, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all ballots voted in the precinct or precincts.

(2) A member of the county recount board shall open each sealed package or envelope and remove the ballots.

(3) One of the members of the board shall read each ballot aloud. As the ballots are read, two clerks shall write the votes cast for each individual in each precinct, at full length, on previously prepared tally sheets. The tally sheets shall show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

History: En. Sec. 198, Ch. 368, L. 1969; R.C.M. 1947, 23-4109; amd. Sec. 180, Ch. 571, L. 1979; Sec. 13-16-402, MCA 1979; redes. 13-16-412 by Code Commissioner, 1979.

13-16-413. Recount of votes cast by machine. The recount board shall remove the seals from the voting machines in all precincts where a recount is required and proceed to record the votes cast for all candidates or on all ballot issues for which the recount is ordered in the same manner as the count is made after the closing of the polls. Any paper ballots voted in the precincts shall be recounted as prescribed in 13-16-412.

History: En. Sec. 181, Ch. 571, L. 1979.

13-16-414. Recount of votes cast by voting devices. (1) The recount board shall test the automatic tabulating equipment used for votes cast by voting devices. If the test does not show any errors, the votes cast for the candidates or on the issues for which a recount is ordered shall be recounted by the tabulating equipment.

(2) If any errors are found in the test or if any questions remain as to the accuracy of the count, the board may have the program and equipment checked by a qualified individual who did not participate in the original preparation of the program and equipment.

(3) The board may also order manual counting of the votes cast if they believe it is necessary to resolve all questions relating to the election.

(4) The board may remove the seals from any voting device and check the ballot on the device with the official certification of the ballot arrangement for each precinct.

(5) Any paper ballots voted in a precinct shall be recounted as prescribed in 13-16-412.

(6) Write-in votes shall be recounted in the same manner as the count is made after the closing of the polls.

History: En. Sec. 182, Ch. 571, L. 1979; amd. Sec. 51, Ch. 575, L. 1981.

13-16-415. Recount totals. After a recount is completed, tally sheets shall be compared and the correctness of all reports of votes cast ascertained. The totals for each candidate or on each issue shall be compiled and checked for accuracy.

History: En. Sec. 183, Ch. 571, L. 1979.

13-16-416. Report of recount. (1) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report which states the number of votes ascertained by the recount.

(2) The recount board shall direct the secretary to enter the result of the election as determined by the recount in the board records.

History: En. Sec. 184, Ch. 571, L. 1979.

Cross-References

Election Administrator secretary of Recount Board, 13-16-101.

13-16-417. Sealing ballots, machines, or devices. (1) When the recount in a precinct has been finished, each ballot shall again be sealed in the same package or envelope in the presence of the election administrator and the county recount board and shall be delivered to the election administrator for custody.

(2) All voting machines or devices from which seals have been removed shall be resealed in the presence of the election administrator and the recount board and shall be delivered to the election administrator for custody.

(3) All other materials used in the recount that are required to be sealed shall be resealed in the same manner and delivered to the election administrator for custody.

History: En. Sec. 200, Ch. 368, L. 1969; R.C.M. 1947, 23-4111; amd. Sec. 185, Ch. 571, L. 1979; Sec. 13-16-403, MCA 1979; redes. 13-16-417 by Code Commissioner, 1979.

13-16-418. Procedure after recount. (1) Immediately after the recount, the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it shall be attested to under seal by the election administrator.

(3) The certificate shall set forth in substance the proceedings of the board and the appearance of any candidates or representatives. The certificate shall adequately designate each precinct recounted; the vote of each precinct according to the official canvass previously made; the nomination, position, or question involved; and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate shall be made in duplicate. One copy shall be transmitted immediately to the secretary of state by certified mail.

(5) (a) If the recount relates to a county, municipal, or district office voted for in only one county, other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action need be taken.

(c) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated and the first certificate is void. The individual receiving the second certificate shall be elected or nominated to the office.

History: Ap. p. Sec. 206, Ch. 368, L. 1969; amd. Sec. 49, Ch. 365, L. 1977; Sec. 23-4117, R.C.M. 1947; Ap. p. Sec. 201, Ch. 368, L. 1969; Sec. 23-4112, R.C.M. 1947; R.C.M. 1947, 23-4112, 43-4117; amd. Sec. 186, Ch. 571, L. 1979; Sec. 13-16-404, MCA 1979; redes. 13-16-418 by Code Commissioner, 1979.

13-16-419. Recount by board of state canvassers. (1) When the secretary of state receives certificates from all county recount boards, he shall file them, fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, nomination, position, or question, as corrected by the certificates, and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, no further action shall be taken.

(b) If there is a change in the results, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

History: En. Sec. 207, Ch. 368, L. 1969; R.C.M. 1947, 23-4118; Sec. 13-16-405, MCA 1979; redes. 13-16-419 by Code Commissioner, 1979; amd. Sec. 52, Ch. 575, L. 1981.

Cross-References

State Board of Canvassers, Title 13, ch. 15, part 5.

Issuance of certificate, 13-15-507.

13-16-420. Misplaced or missing ballots. If during a recount the county recount board discovers that ballots are misplaced or missing, it may petition the election administrator to inspect all sealed ballots within the county precincts to find the misplaced or missing ballots. Upon receiving the petition, the election administrator shall inspect the sealed ballots to find the misplaced or missing ballots. Upon completion of the recount, the misplaced or missing ballots must be placed in their proper precinct and sealed with the remaining ballots.

History: En. Sec. 16, Ch. 591, L. 1991.

Part 5
Tie Votes

13-16-501. Tie vote after recount. (1) If the recount shows a tie vote for any office and it cannot be determined who has been nominated by the primary election, the election officer with whom the candidates' nominating declarations or petitions were filed shall determine by lot which candidate shall be nominated. Written notice of the time and place of the drawing shall be given to each candidate involved.

(2) If the recount after a general election shows a tie vote and it cannot be determined who has been elected, the office or position shall be filled as provided by 13-16-502 through 13-16-506.

History: En. Sec. 208, Ch. 368, L. 1969; R.C.M. 1947, 23-4119; amd. Sec. 187, Ch. 571, L. 1979.

13-16-502. Tie vote in election for United States congress. If there is a tie vote for United States representative or senator, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

History: En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(1); amd. Sec. 188, Ch. 571, L. 1979.

Cross-References

"Special election" defined, 13-1-101.

Notice of special election, 13-1-108.

13-16-503. Tie vote in election for supreme court justice, district court judge, or state legislator. If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislature, the secretary of state shall send a certified statement to the governor showing the votes cast for each individual and the governor shall appoint one of those candidates to the office.

History: En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(2); amd. Sec. 189, Ch. 571, L. 1979.

13-16-504. Tie vote in election for state executive officers. If there is a tie vote for governor and lieutenant governor, secretary of state, attorney general, state auditor, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the secretary of state shall transmit a certified copy of the statement to the legislature showing the votes cast for the two or more candidates having an equal and the highest number of votes. The legislature, at its next regular session, shall elect one of these candidates to fill the office by joint ballot of the two houses.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(1), (4); amd. Sec. 190, Ch. 571, L. 1979.

Cross-References

Time of regular legislative session, 5-2-103.

13-16-505. Tie vote in election for county commissioner. If there is a tie vote for commissioner, the senior district judge shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(3); amd. Sec. 191, Ch. 571, L. 1979.

Cross-References

Vacancy on Board of County Commissioners, 7-4-2106.

13-16-506. Tie vote in election for other county officers. If there is a tie vote for clerk of the district court, county attorney, or any county officer except county commissioner, the commissioners shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(2); amd. Sec. 192, Ch. 571, L. 1979.

Cross-References

Vacancies of county offices, 7-4-2206.

13-16-507. Tie vote in election for officers of nonspecified political subdivision. If there is a tie vote for an officer of any political subdivision not specifically provided for in this part, the governing body of that jurisdiction shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 193, Ch. 571, L. 1979.

Cross-References

Vacancies of offices of political subdivisions generally, Title 7, ch. 4, part 22.

CHAPTER 17

VOTING MACHINES

Part 1 — General Provisions

13-17-101. Secretary of state to approve voting machines and devices.
13-17-102. Use of qualified technicians and advisors.
13-17-103. Required specifications for equipment.
13-17-104. Providing voting machines or devices — payment.
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Part 2 — Preparation For Use of Machines

13-17-201. Election administrator to instruct election judges.
13-17-202. Repealed.
13-17-203. Publication of information concerning machines or devices.
13-17-204. Voting machines or devices to be exhibited.
13-17-205. Repealed.
13-17-206. Arrangement of machine ballot.
13-17-207. Repealed.

Part 3 — Voting Procedure

13-17-301. Placement of equipment — time for use.
13-17-302. Repealed.
13-17-303. Repealed.
13-17-304. Repealed.
13-17-305. Request to use paper ballots.
13-17-306. Use of separate paper ballots for voting on certain candidates or issues.
13-17-307. Repealed.

Part 4 — Vote Count
(Repealed. Sec. 407, Ch. 571, L. 1979)

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Criminal provisions relating to voting machines, 13-35-205, 13-35-206.

Use of voting machines in school elections, 20-20-421.

Part 1
General Provisions

13-17-101. Secretary of state to approve voting machines and devices. (1) Before any voting machine or device can be used for any election in this state, the secretary of state shall:

(a) examine the machine or device to determine if it complies with the requirements of this chapter;

(b) within 30 days after examining a machine or device, file a report of the examination in his office;

(c) include in the report the reasons for approval or disapproval of the use of the machine or device and his opinion of the economic and procedural impact of the use of the machine or device by the various classes of counties of this state; and

(d) within 5 days after filing the report, transmit to the election administrator of each county a copy of the report.

(2) Voting machines and devices may not be used unless approved by the secretary of state 60 days or more prior to the election at which they will be used.

History: En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(1), (2); amd. Sec. 194, Ch. 571, L. 1979.

Cross-References

Definition of "voting machine or device", 13-1-101.

13-17-102. Use of qualified technicians and advisors. (1) The secretary of state may employ and compensate qualified technicians and advisors who are electors of this state to assist him in duties required by 13-17-101. Advisors who are public officers or employees shall serve without additional compensation other than expenses of attending the examination if the examination takes place during their regular working hours.

(2) The person or company submitting a machine or device for examination shall pay the compensation and expenses of technicians and advisors connected with the examination to the secretary of state for deposit in the state general fund. The secretary of state and the person or company shall

reach agreement on the number of technicians and advisors to be compensated before the examination is held.

History: En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(3), (4); amd. Sec. 195, Ch. 571, L. 1979.

13-17-103. Required specifications for equipment. A voting machine or device may not be approved unless:

(1) an elector can vote in secrecy;

(2) an elector is prevented from voting for any candidate or upon any ballot issue more than once and is also prevented from voting on any office or ballot issue for which he is not entitled to vote;

(3) an elector can secretly select the party for which he wishes to vote in a primary election and the machine or device will count only votes for the candidates of that party by the elector in the primary election;

(4) an elector can vote a split ticket in a general election if he desires;

(5) every valid vote cast is registered and recorded;

(6) the machine or device is constructed so that it cannot be tampered with for a fraudulent purpose and is also constructed so that during the progress of the voting no individual can see or know the number of votes registered for any candidate or on any ballot issue;

(7) it allows write-in voting; and

(8) a guarantee to provide training and assistance to election officials is included in each contract for purchase of the machine or device.

History: En. Sec. 143, Ch. 368, L. 1969; R.C.M. 1947, 23-3802(1), (3); amd. Sec. 196, Ch. 571, L. 1979; amd. Sec. 33, Ch. 370, L. 1987.

Cross-References

Secret ballot required, Art. IV, sec. 1, Mont. Const.

13-17-104. Providing voting machines or devices — payment. (1) The county governing body may provide approved voting machines or devices as practicable.

(2) Funds for voting machines or devices may be provided by the same methods available for other capital equipment purchases by the county.

(3) The governing body of a county may put the question of purchasing voting machines or devices or the question of which type of voting machine or device to purchase to the registered electors of the county by the same method that any other question is referred to the electors.

History: En. Sec. 144, Ch. 368, L. 1969; R.C.M. 1947, 23-3803; amd. Sec. 197, Ch. 571, L. 1979.

Cross-References

Referral of question to voters, 7-5-132.

13-17-105. Experimental use of machines or devices. The governing body of a county may provide for the experimental use at an election of a voting machine or device that has been approved by the secretary of state in one or more precincts without a formal adoption or purchase of the machine or device. Its use at the election is valid for all purposes as if the equipment had been formally adopted or purchased.

History: En. Sec. 158, Ch. 368, L. 1969; R.C.M. 1947, 23-3817; amd. Sec. 198, Ch. 571, L. 1979.

13-17-106. General election laws to apply. All laws applicable to elections where voting is not done by machine or device and all penalties prescribed for violations of those laws apply to elections and precincts where voting machines or devices are used if they are not in conflict with the provisions of this chapter.

History: En. Sec. 163, Ch. 368, L. 1969; amd. Sec. 44, Ch. 334, L. 1977; amd. Sec. 42, Ch. 365, L. 1977; R.C.M. 1947, 23-3822; amd. Sec. 199, Ch. 571, L. 1979.

13-17-107. Secretary of state to prescribe rules. (1) The secretary of state may prescribe rules for the submission of voting machines and devices for examination and additional requirements for approval of machines and devices.

(2) The secretary of state shall prescribe rules for the complete procedures necessary to use each type of voting machine or device now approved for use in this state and for each type of machine or device approved for use under the provisions of this chapter.

History: En. Sec. 200, Ch. 571, L. 1979.

Part 2

Preparation For Use of Machines

13-17-201. Election administrator to instruct election judges. (1) Before each election, the election administrator shall instruct all election judges in the use of the machines or devices. He shall give to each election judge who has received instruction and is fully qualified to conduct an election with the machine a certificate to that effect.

(2) A chief election judge may not serve in a precinct where voting machines or devices are used unless he has received instruction, is fully qualified to perform duties in connection with the machine or device, and has received a certificate to that effect from the election administrator.

History: En. Sec. 148, Ch. 368, L. 1969; amd. Sec. 41, Ch. 365, L. 1977; R.C.M. 1947, 23-3807; amd. Sec. 201, Ch. 571, L. 1979.

13-17-202. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 151, Ch. 368, L. 1969; R.C.M. 1947, 23-3810.

13-17-203. Publication of information concerning machines or devices. Not more than 10 or less than 3 days before an election at which voting machines or devices will be used, the election administrator shall publish on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county:

(1) a diagram showing the voting machine or device and ballot arrangement (in newspaper only);

(2) a statement of the locations where voting machines or devices are on public exhibition;

(3) illustrated instructions on how to vote.

History: En. Sec. 149, Ch. 368, L. 1969; R.C.M. 1947, 23-3808; amd. Sec. 202, Ch. 571, L. 1979.

13-17-204. Voting machines or devices to be exhibited. A voting machine or device shall be on exhibition in the office of the election administrator of counties where such equipment is used and may be exhibited at other locations. The election administrator shall demonstrate the voting machine or device to any inquiring elector.

History: En. Sec. 150, Ch. 368, L. 1969; R.C.M. 1947, 23-3809; amd. Sec. 203, Ch. 571, L. 1979.

13-17-205. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804(1), (7).

13-17-206. Arrangement of machine ballot. The order and arrangement of ballots to be used with voting machines or devices shall be the same as paper ballots insofar as possible and shall be prescribed by the secretary of state before each election.

History: En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804; amd. Sec. 204, Ch. 571, L. 1979.

Cross-References

Order and arrangement of paper ballots, Title 13, ch. 12, part 2.

13-17-207. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 152, Ch. 368, L. 1969; R.C.M. 1947, 23-3811.

Part 3
Voting Procedure

13-17-301. Placement of equipment — time for use. (1) The exterior of the voting machines or devices or the booths in which they are placed and every part of the polling place shall be in plain view of the election judges.

(2) An elector may not remain within the voting machine or device booth or compartment longer than is reasonably necessary to vote. If he refuses to leave, the election judges shall remove him.

History: En. Sec. 147, Ch. 368, L. 1969; R.C.M. 1947, 23-3806(1); amd. Sec. 205, Ch. 571, L. 1979.

Cross-References

Coercion or undue influence of voters, 13-35-218.

13-17-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 147, Ch. 368, L. 1969; R.C.M. 1947, 23-3806(2).

13-17-303. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 153, Ch. 368, L. 1969; amd. Sec. 43, Ch. 334, L. 1977; R.C.M. 1947, 23-3812.

13-17-304. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 159, Ch. 368, L. 1969; R.C.M. 1947, 23-3818(1).

13-17-305. Request to use paper ballots. (1) (a) Where voting machines are used, an elector may request to vote by paper ballot instead of using the machine. The election judges shall provide the elector with a paper ballot when requested.

(b) Where voting devices are used, the election administrator, with approval of the governing body of the county if the election administrator is an appointed official, may provide paper ballots if the election administrator believes such ballots are necessary. However, if more than 5% of the electors voting in the last preceding general election voted using paper ballots, the election administrator shall provide paper ballots. The printing of paper ballots provided pursuant to this subsection is an allowable election cost under the provisions of 13-1-302.

(2) Paper ballots shall be cast and counted by the election judges in the manner provided by law.

(3) For the purposes of this section, "voting machine" means a mechanical apparatus which is used for voting by using levers which provide a tabulating system within the machine.

History: En. Sec. 159, Ch. 368, L. 1969; R.C.M. 1947, 23-3818(2); amd. Sec. 206, Ch. 571, L. 1979; amd. Sec. 1, Ch. 588, L. 1985.

Cross-References

Counting of ballots, Title 13, ch. 15.

13-17-306. Use of separate paper ballots for voting on certain candidates or issues. Whenever a voting machine or device does not allow proper lockout or does not allow adequate space for the candidates for all offices or for all ballot issues, separate paper ballots may be used for some or all offices or ballot issues if written authorization is given to the election administrator by the secretary of state.

History: En. Sec. 160, Ch. 368, L. 1969; R.C.M. 1947, 23-3819; amd. Sec. 207, Ch. 571, L. 1979.

13-17-307. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 146, Ch. 368, L. 1969; R.C.M. 1947, 23-3805.

Part 4
Vote Count
(Repealed. Sec. 407, Ch. 571, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

13-17-401. En. Sec. 154, Ch. 368, L. 1969; R.C.M. 1947, 23-3813.

13-17-402. En. Sec. 155, Ch. 368, L. 1969; R.C.M. 1947, 23-3814.

13-17-403. En. Sec. 156, Ch. 368, L. 1969; R.C.M. 1947, 23-3815.

13-17-404. En. Sec. 157, Ch. 368, L. 1969; R.C.M. 1947, 23-3816.

CHAPTER 18

ELECTRONIC VOTING SYSTEMS

(Repealed. Sec. 407, Ch. 571, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections:

13-18-101. En. Sec. 164, Ch. 368, L. 1969; R.C.M. 1947, 23-3901.

13-18-102. En. Sec. 165, Ch. 368, L. 1969; R.C.M. 1947, 23-3902.

13-18-103. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(1), (2).

13-18-104. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(4).

13-18-105. En. Sec. 169, Ch. 368, L. 1969; R.C.M. 1947, 23-3906.

13-18-106. En. Sec. 170, Ch. 368, L. 1969; R.C.M. 1947, 23-3907.

13-18-201. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(part).

13-18-202. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(1).

13-18-203. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(2).

13-18-204. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(3).

13-18-205. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(4).

13-18-206. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(5).

13-18-207. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(3).

13-18-208. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(5).

13-18-209. En. Sec. 168, Ch. 368, L. 1969; amd. Sec. 43, Ch. 365, L. 1977; R.C.M. 1947, 23-3905(1), (2).

13-18-210. (1), (3)En. Sec. 168, Ch. 368, L. 1969; amd. Sec. 43, Ch. 365, L. 1977; Sec. 23-3905, R.C.M. 1947; (2)En. Sec. 167, Ch. 368, L. 1969; Sec. 23-3904, R.C.M. 1947; R.C.M. 1947, 23-3904(part), 23-3905(3), (4).

CHAPTER 19

MAIL BALLOT ELECTIONS

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13-19-314. Resolving issues in question.

Part 1
General Provisions

13-19-101. Statement of purpose. The purpose of this chapter is to provide the option of conducting certain specified elections using a procedure called a "mail ballot election" and to provide the procedures therefor. The provisions of this chapter recognize that sound public policy concerning the conduct of elections often requires the balancing of various elements of the public interest that are sometimes in conflict. Among these factors are the public's interest in fair and accurate elections, the election of those who will govern or represent, and cost-effective administration of all functions of government, including the conduct of elections. The provisions of this chapter further recognize that when these and other factors are balanced, the conduct of elections by mail ballot is potentially the most desirable of the available options in certain circumstances.

History: En. Sec. 1, Ch. 196, L. 1985.

13-19-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(2) "Mail ballot election" means any election that involves either candidates or ballot issues and is conducted in compliance with the procedure specified in 13-19-106.

(3) "Political subdivision" means a political subdivision of the state, including a school district.

(4) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and which is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(5) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's vote and to prevent that elector's ballot from being distinguished from the ballots of other electors.

History: En. Sec. 2, Ch. 196, L. 1985; amd. Sec. 1, Ch. 10, L. 1987.

13-19-103. General election laws to apply. All laws applicable to elections when voting is not done by mail ballot and all penalties prescribed for violation of those laws apply to elections conducted by mail ballot to the extent they do not specifically conflict with the provisions of this chapter or are not otherwise provided for by this chapter.

History: En. Sec. 5, Ch. 196, L. 1985.

13-19-104. Mail ballot elections not mandatory — when authorized — when prohibited. (1) Conducting elections by mail ballot is only one option available to local officials and nothing in this chapter mandates that the procedure be used.

(2) The following elections may be conducted by mail ballot:

(a) an election in a political subdivision required to hold annual elections under 13-1-104(3);

(b) an election in a city of the third class, as defined in 7-1-4111(3), if all of the candidates whose names will appear on the ballot are candidates for offices to be elected without party designation;

(c) an election in a town as defined in 7-1-4111(4);

(d) an election conducted under 7-13-2236 in an unincorporated area; and

(e) a special election called by a local government unit for the sole purpose of submitting one or more ballot issues to its qualified electors if such special election is not held in conjunction with a statutorily scheduled election.

(3) The following elections may not be conducted by mail ballot:

(a) an election held for one of the purposes or at the time provided in 13-1-104(1) and 13-1-107(1);

(b) an election held for one of the purposes or at the time provided in 13-1-104(2) and 13-1-107(2), except as specifically allowed by subsections (2)(b) and (2)(c) of this section;

(c) an election being held under the provisions of the Montana Recall Act, in Title 2, chapter 16, part 6;

(d) an election involving candidates for public office, except as specifically allowed by subsections (2)(a) through (2)(c) of this section; and

(e) a special election being held in conjunction with a statutorily scheduled election.

History: En. Sec. 4, Ch. 196, L. 1985; amd. Sec. 2, Ch. 10, L. 1987.

13-19-105. Role of secretary of state. In addition to other powers and duties conveyed by law, the secretary of state, with advice from election administrators, shall:

(1) prescribe the form of materials to be used in the conduct of mail ballot elections;

(2) review written plans for the conduct of mail ballot elections as provided in 13-19-205; and

(3) adopt rules consistent with this chapter to:

(a) establish and maintain uniformity in the conduct of mail ballot elections; and

(b) establish procedures for the conduct of mail ballot elections that:

(i) prevent fraud;

(ii) ensure the accurate handling and canvassing of mail ballots; and

(iii) ensure that the secrecy of voted ballots is maintained.

History: En. Sec. 6, Ch. 196, L. 1985.

13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, except that mail ballots are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) The elector shall mark the ballot at home and place it in a secrecy envelope.

(4) The elector shall then place the secrecy envelope containing his ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received prior to a specified time on election day.

(5) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(6) If the ballot so qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(7) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law.

History: En. Sec. 3, Ch. 196, L. 1985; amd. Sec. 17, Ch. 591, L. 1991.

Part 2

Preelection Procedure

13-19-201. How election initiated. A proposal to conduct an election under this chapter may be initiated by either the election administrator or the appropriate governing body as provided in 13-19-202 through 13-19-204.

History: En. Sec. 7, Ch. 196, L. 1985.

13-19-202. Initiation by governing body. (1) A political subdivision may, by resolution of the governing body addressed to the election administrator, request that a particular election be conducted under the provisions of this chapter.

(2) No later than 70 days before election day, the governing body shall transmit its request to the election administrator, who shall determine whether it is economically and administratively feasible to conduct the requested election by mail ballot.

(3) Except as provided in 13-19-204, the decision to conduct an election under the provisions of this chapter is within the sole discretion of the election administrator.

(4) Within 5 days after receiving a request, the election administrator shall respond in writing, stating that the request is either granted or denied for reasons specified. If granted, the election administrator shall prepare a plan as provided in 13-19-205.

History: En. Sec. 8, Ch. 196, L. 1985.

13-19-203. Initiation by election administrator. (1) Even if no request has been received from the governing body concerned, the election administrator may conduct any election authorized by 13-19-104 under this chapter if, in his discretion, that would be the most economically and administratively feasible way of conducting the election in question.

(2) If he decides to conduct an election pursuant to subsection (1), the election administrator shall prepare a written plan as provided in 13-19-205 and forward a copy to the governing body concerned, together with a written statement informing it of his decision to conduct the election by mail ballot and the reasons therefor and the right of the governing body to object under 13-19-204.

History: En. Sec. 9, Ch. 196, L. 1985.

13-19-204. Objection of political subdivision. (1) A political subdivision may, by resolution of the governing body, object to the conduct of one of its elections under this chapter. The resolution must include a statement of the reasons for the objection.

(2) If such a resolution is filed with the election administrator no later than 55 days prior to election day, the election may not be conducted under this chapter.

History: En. Sec. 10, Ch. 196, L. 1985.

13-19-205. Written plan for conduct of election — amendments — approval procedures. (1) The election administrator shall prepare a written plan, including a timetable, for the conduct of the election and shall submit it to the secretary of state at least 60 days prior to the date set for the election.

(2) The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

(3) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

(4) When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan.

History: En. Sec. 11, Ch. 196, L. 1985.

13-19-206. Distributing materials to electors — procedure. For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot, except that the election administrator may include separate ballots for each type of election being held concurrently;

(b) a secrecy envelope;

(c) a return/verification envelope; and

(d) complete written instructions for voting and returning ballots; and

(3) ensure that each packet is:

(a) clearly marked on its face with words stating the appropriate postal regulation language to prohibit forwarding of the packet;

(b) addressed to a single individual elector at the most current address available from the official registration records; and

(c) deposited in the United States mail with sufficient prepaid postage for it to be delivered to the elector's address.

History: En. Sec. 13, Ch. 196, L. 1985; amd. Sec. 18, Ch. 591, L. 1991.

13-19-207. When materials to be mailed. For any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day. All ballots must be mailed the same day.

History: En. Sec. 14, Ch. 196, L. 1985.

Part 3
Election Procedure

13-19-301. Voting mail ballots. (1) Upon receipt of his ballot, the elector may vote by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing a single ballot in the return/verification envelope;

(d) executing the affidavit printed on the return/verification envelope; and

(e) returning the return/verification envelope with the secrecy envelope containing the ballot enclosed, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when, after the requirements of 13-19-310 and 13-19-311 have been satisfied, the return/verification envelope has been opened by election officials and the secrecy envelope containing the ballot has been deposited in the official ballot box.

History: En. Sec. 16, Ch. 196, L. 1985.

13-19-302. Proportional voting. The election administrator shall provide a method for proportional voting in his written plan for an election conducted under this chapter that requires votes to be cast in proportion to ownership or any factor other than one vote per person.

History: En. Sec. 12, Ch. 196, L. 1985.

13-19-303. Voting by elector when absent from place of residence during conduct of election. (1) A qualified elector who will be absent from the county during the time the election is being conducted may:

(a) vote in person in the election administrator's office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed; or

(b) make a written request, signed by the applicant and addressed to the election administrator, that the ballot be mailed to an address other than that which appears on the registration card. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.

(2) Ballots mailed to electors pursuant to this section must be mailed the same day that all other ballots are mailed.

History: En. Sec. 15, Ch. 196, L. 1985.

13-19-304. Voting by nonregistered electors. (1) For any election being conducted under this chapter by a political subdivision that allows individuals to vote who are not registered electors, such an individual may vote by appearing in person at the election administrator's office and demonstrating that he possesses the qualifications which entitle him to vote.

(2) An individual complying with subsection (1) before official ballots are available may leave a card with the election administrator containing his signature and the address to which his ballot is to be mailed. The signature provided must then be used for verification when the mail ballot is returned.

(3) An individual complying with subsection (1) after official ballots are available and before the close of the polls on election day must be permitted to vote at that time.

History: En. Sec. 23, Ch. 196, L. 1985.

13-19-305. Replacement ballots — procedures. (1) An elector may obtain a replacement ballot as provided in this section if his ballot is destroyed, spoiled, lost, or not received by the elector.

(2) An elector seeking a replacement ballot shall sign a sworn statement stating that the ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.

(3) Upon receiving the sworn statement, the election administrator shall issue a replacement ballot to the elector. Each spoiled ballot must be returned before a new one may be issued.

(4) The election administrator shall designate his office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.

(5) A replacement ballot may also be issued pursuant to 13-19-313.

(6) The election administrator shall keep a record of each replacement ballot issued. If he later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, he shall immediately notify the county attorney and the secretary of state of each instance.

History: En. Sec. 17, Ch. 196, L. 1985.

13-19-306. Returning marked ballots — when — where. (1) After complying with 13-19-301, an elector or his designee may return his ballot on or before election day by either:

(a) depositing the return/verification envelope in the United States mail, with sufficient postage affixed; or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) In order to have his ballot counted, each elector must return it in such a manner that it is received prior to 8 p.m. on election day.

History: En. Sec. 18, Ch. 196, L. 1985; amd. Sec. 19, Ch. 591, L. 1991.

13-19-307. Places of deposit. (1) The election administrator shall designate his office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector.

(2) Prior to election day, ballots may be returned to any designated place of deposit only during regular business hours.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any location so designated shall function as a place of deposit only on election day.

(5) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law.

History: En. Sec. 19, Ch. 196, L. 1985.

13-19-308. Disposition of ballots returned in person. Ballots returned by the elector in person must be processed as follows:

(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector is present, officials shall:

(a) verify the signature pursuant to 13-19-310;

(b) resolve any questions as to the validity of the ballot; and

(c) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator's office, the election official on location shall:

(a) keep a log of the names of all electors from whom he receives ballots and the names of the people who deliver the ballots;

(b) deposit the unopened return/verification envelope in the sealed ballot transport box provided for that purpose; and

(c) securely retain all ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots disposed of in the same manner provided for ballots returned by mail.

History: En. Sec. 20, Ch. 196, L. 1985; amd. Sec. 20, Ch. 591, L. 1991.

13-19-309. Disposition of ballots returned by mail. (1) Upon receipt of each return/verification envelope, election officials shall:

(a) compare the name with the official register to determine that the person has not previously voted;

(b) verify the signature on the affidavit in the manner provided by 13-19-310;

(c) open the return/verification envelope and retain it as an official record;

(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to 13-19-311;

(e) if the ballot is valid, record the name of the elector in the official register as having voted; and

(f) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If at any point there is a question concerning a particular ballot, the election administrator may not deposit the ballot in question. The election administrator shall retain all materials relating to the questioned ballot until the question is resolved satisfactorily or the question is determined as provided in 13-19-314.

History: En. Sec. 21, Ch. 196, L. 1985.

13-19-310. Signature verification — procedures. (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the return/verification envelope to the signature on that elector's registration card or signature card provided under 13-19-304.

(2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, he shall proceed to validate the ballot.

(3) If the election administrator is not convinced that the individual signing the return/verification envelope is the same as the one whose name appears on the registration card, he may not validate the ballot but instead shall:

(a) give notice to the elector as provided in 13-19-313; and

(b) if the discrepancy is not rectified to the election administrator's satisfaction, present the unopened envelope and the registration card to the canvassing board for a determination.

History: En. Sec. 22, Ch. 196, L. 1985.

13-19-311. Valid ballots — requirements. (1) Only valid ballots may be counted in an election conducted under this chapter.

(2) For the purpose of this chapter, a ballot is valid only if:

(a) it is sealed in the secrecy envelope and returned in the return/verification envelope;

(b) the elector's signature on the affidavit on the return/verification envelope is verified pursuant to 13-19-310; and

(c) it is received before 8 p.m. on election day.

(3) A ballot is invalid if:

(a) more than one ballot is enclosed in a single return/verification or secrecy envelope unless there are multiple elections being held at the same time and there is only one ballot for each election in the envelope; or

(b) any identifying marks are placed on the ballot by the elector.

History: En. Sec. 24, Ch. 196, L. 1985; amd. Sec. 21, Ch. 591, L. 1991.

13-19-312. Procedure at close of voting. (1) After the close of voting on election day, election officials shall:

(a) open the official ballot boxes;

(b) open each secrecy envelope, removing the ballot; and

(c) proceed to count the votes as otherwise provided by law.

(2) On election day, the election administrator may begin the procedures described in subsection (1) before the polls close if he complies with the procedures described in 13-15-103.

History: En. Sec. 27, Ch. 196, L. 1985; amd. Sec. 22, Ch. 591, L. 1991.

13-19-313. Notice to elector — opportunity to resolve questions. (1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector, either by telephone or by first-class mail, if the election administrator:

(a) is unable to verify the elector's signature under 13-19-310; or

(b) has discovered a procedural mistake made by the elector that would invalidate his ballot under 13-19-311.

(2) The election administrator shall inform the elector that he may appear in person at the election administrator's office prior to 8 p.m. on election day and verify the signature or correct the mistake.

(3) Any elector so appearing must be permitted to:

(a) verify his signature, after proof of identification, by affirming that the signature is in fact his or completing a new registration card containing his current signature;

(b) correct any minor mistake if the correction would render the ballot valid; or

(c) if necessary, request and receive a replacement ballot and vote it at that time.

History: En. Sec. 25, Ch. 196, L. 1985.

13-19-314. Resolving issues in question. Any questions concerning the validity of a ballot or signature must be resolved in the following manner:

(1) If the election administrator is unable to resolve the issue to his satisfaction, he shall give notice to the elector as provided in 13-19-313.

(2) If the elector fails to appear or, if even after such an appearance, the issue is still not resolved to the election administrator's satisfaction, the election administrator shall present the issue for a determination to the board of judges appointed to count the ballots.

(3) If the counting board is unable to resolve the issue to its satisfaction, it may not count the ballot in question. Instead, the election administrator shall present the issue to the board of canvassers for a determination of the issue.

(4) If the board of canvassers is unable to resolve the issue, the ballot must not be counted.

History: En. Sec. 26, Ch. 196, L. 1985.

CHAPTERS 20 AND 21

RESERVED

CHAPTER 22

YOUTH VOTING ACT

Part 1 — General Provisions

13-22-101. Short title.
13-22-102. Purpose and intent.
13-22-103. Youth voting program established — program coordination — school participation.
13-22-104. Program development.
13-22-105. Responsibilities of participating schools.
13-22-106. Polling place procedures.
13-22-107. Funding.
13-22-108. Reports.

Part 1

General Provisions

13-22-101. Short title. This chapter may be cited as the "Youth Voting Act".

History: En. Sec. 1, Ch. 348, L. 1991.

13-22-102. Purpose and intent. The intent of the legislature is to establish a nonpartisan youth voting program that will:

(1) provide the youth of Montana with practical experience in the democratic process;

(2) increase the likelihood that Montana's youth will participate in the process as adult voters and encourage the participation of more parents in elections;

(3) not benefit any elected official, candidate for elective office, political party, campaign for or against any ballot issue, or any measure attempting to qualify for placement on a ballot; and

(4) be entirely funded through private donations.

History: En. Sec. 2, Ch. 348, L. 1991.

13-22-103. Youth voting program established — program coordination — school participation. (1) There is a youth voting program for minors to provide young Montanans direct experience in the voting process.

(2) The secretary of state, in consultation with the superintendent of public instruction, shall solicit county election administrators and schools throughout the state to participate in the youth voting program. The secretary of state and the superintendent of public instruction shall confer with the participating county election administrators and county superintendents of schools and, from among interested schools, shall facilitate the participation of as many schools in the program as available funds and other circumstances allow. A designated school may, at any time, decline to participate by notifying the secretary of state in writing.

History: En. Sec. 3, Ch. 348, L. 1991.

13-22-104. Program development. (1) The secretary of state and the superintendent of public instruction shall compile a program and establish a process whereby:

(a) students are instructed on the electoral process, the importance of voting, and how to mark and cast a ballot;

(b) students are educated about current issues in a manner appropriate for each grade level involved;

(c) students cast facsimile or mock ballots while accompanying their parents to polling places during regular elections; and

(d) ballots cast by students at elections are counted and the results are made available to all participating schools.

(2) The program must be presented to participating schools in a nonpartisan, nonbiased, and informative manner.

History: En. Sec. 4, Ch. 348, L. 1991.

13-22-105. Responsibilities of participating schools. Participating schools shall, in a timely manner, provide to students and their parents or guardians instruction and guidance on how to participate in the program, youth voter registration procedures and deadlines, a list of candidates and issues, and polling and balloting procedures.

History: En. Sec. 5, Ch. 348, L. 1991.

13-22-106. Polling place procedures. (1) The secretary of state and the superintendent of public instruction shall work with county election officials to provide that:

(a) facsimile or mock ballots are distributed to polling places in counties with participating schools;

(b) participating students accompanied by a parent or eligible voter are allowed to cast ballots in the youth election; and

(c) student ballots are counted and the results are announced to the participating schools.

(2) The provisions of this section must be carried out in a manner that will not interfere with the normal voting process or established polling place procedures.

History: En. Sec. 6, Ch. 348, L. 1991.

13-22-107. Funding. (1) Public money may not be used to support or fund the youth voting program established in this chapter.

(2) A nonprofit corporation may be formed subject to the provisions of Title 35, chapter 2, to solicit donations from private sources. Money solicited under this subsection must be used only for the youth voting program.

History: En. Sec. 7, Ch. 348, L. 1991.

13-22-108. Reports. (1) Each biennium, the secretary of state shall provide, upon request, a report to the legislature outlining the program's effectiveness in achieving its objectives.

(2) Participating schools and agencies shall provide to the secretary of state information regarding the youth voting program for the secretary of state's report to the legislature.

History: En. Sec. 8, Ch. 348, L. 1991.

CHAPTERS 23 AND 24

RESERVED

CHAPTER 25

ELECTIONS FOR FEDERAL OFFICE

Part 1 — Presidential Elections

13-25-101. Nomination of electors — ballot.
13-25-102. Election of electors.
13-25-103. Returns — lists of electors elected.
13-25-104. Meeting and voting of electors.
13-25-105. Lists of persons voted for.
13-25-106. Compensation of electors.
13-25-107. Vacancy in office of elector.

Part 2 — Congressional Elections

13-25-201. Election of United States senators and representatives.
13-25-202. Vacancy in office of United States senator.
13-25-203. Vacancy in office of United States representative.
13-25-204. Certificates issued by governor.
13-25-205. Nominations for special election.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Reports of contributions and expenditures required of candidates for federal office, 13-37-225.

Part 1
Presidential Elections

Part Cross-References

Presidential elections, Art. II, sec. 1, U.S. Const.; amend. 12, U.S. Const.

13-25-101. Nomination of electors — ballot. (1) Each political party qualified under 13-10-601 shall nominate presidential electors for this state and file certificates of nomination for these candidates with the secretary of state in a form prescribed by the secretary of state no later than 75 days before the general election, in the manner and number provided by law.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which must be printed on the ballot.

(3) The names of candidates for electors of president and vice president may not be printed upon the ballot.

History: En. Sec. 215, Ch. 368, L. 1969; R.C.M. 1947, 23-4302(1) thru (3); amd. Sec. 208, Ch. 571, L. 1979; amd. Sec. 34, Ch. 250, L. 1985; amd. Sec. 9, Ch. 390, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 390 in middle of (1), after "state", inserted "in a form prescribed by the secretary of state"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Ballot form and uniformity, 13-12-202.

13-25-102. Election of electors. (1) On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected, there shall be elected as many electors for president and vice president of the United States as are allocated to this state.

(2) The votes cast for candidates for president and vice president of each political party shall be counted for the candidates for presidential electors of the political party whose names have been filed with the secretary of state.

History: (1)En. Sec. 214, Ch. 368, L. 1969; Sec. 23-4301, R.C.M. 1947; (2)En. Sec. 215, Ch. 368, L. 1969; Sec. 23-4302, R.C.M. 1947; R.C.M. 1947, 23-4301, 23-4302(4).

13-25-103. Returns — lists of electors elected. (1) The votes for candidates for president and vice president shall be given, received, returned, and canvassed as the votes are given, returned, and canvassed for candidates for congress.

(2) The secretary of state shall prepare three lists of names of electors elected and affix the seal of the state to the lists.

(3) The lists shall be signed by the governor and secretary of state and delivered by the latter to the college of electors at the hour of their meeting.

History: En. Sec. 216, Ch. 368, L. 1969; R.C.M. 1947, 23-4303.

13-25-104. Meeting and voting of electors. (1) The electors shall meet in Helena at 2 p.m. on the first Monday after the second Wednesday in December following their election.

(2) The electors shall vote by separate ballots for one person for president and one for vice president of the United States.

(3) The electors shall cast their ballots for the persons who received the highest number of votes for president and vice president of the United States, respectively, in the most recently conducted general election in the state of Montana.

History: En. Sec. 217, Ch. 368, L. 1969; R.C.M. 1947, 23-4304; amd. Sec. 1, Ch. 61, L. 1981.

13-25-105. Lists of persons voted for. The electors shall make lists of the persons voted for as president and vice president; indicate the number of votes for each; and certify, seal, and transmit the lists as prescribed by laws of the United States.

History: En. Sec. 218, Ch. 368, L. 1969; R.C.M. 1947, 23-4305.

13-25-106. Compensation of electors. Electors shall receive the same pay and mileage allowed members of the legislature. Payments shall be certified by the secretary of state and paid by the state auditor from the state general fund.

History: En. Sec. 219, Ch. 368, L. 1969; R.C.M. 1947, 23-4306.

Cross-References

Pay and mileage allowed to Legislators, Title 5, ch. 2, part 3.

13-25-107. Vacancy in office of elector. If a vacancy occurs, the electors present shall elect a citizen of the state to fill the vacancy.

History: En. Sec. 220, Ch. 368, L. 1969; R.C.M. 1947, 23-4307.

Part 2

Congressional Elections

Part Cross-References

Election to Congress generally, Art. I, sec. 2, U.S. Const.; amend. 17, U.S. Const.

Time, place, and manner of elections, Art. I, sec. 4, U.S. Const.

13-25-201. Election of United States senators and representatives. (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) Nominations and elections shall be as provided by law for governor.

History: En. Sec. 221, Ch. 368, L. 1969; amd. Sec. 51, Ch. 365, L. 1977; R.C.M. 1947, 23-4401.

Cross-References

Manner of election of Governor, Art. VI, sec. 2, Mont. Const.

13-25-202. Vacancy in office of United States senator. (1) If a vacancy occurs in the office of United States senator, an election to fill the vacancy shall be held at the next general election. If the election is invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election.

(2) The governor may make a temporary appointment to fill the vacancy until the election.

History: En. Sec. 222, Ch. 368, L. 1969; amd. Sec. 52, Ch. 365, L. 1977; R.C.M. 1947, 23-4402.

13-25-203. Vacancy in office of United States representative. (1) If a vacancy occurs in the office of United States representative, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).

(2) The election to fill the unexpired term shall be held no less than 75 or more than 90 days from the time the vacancy occurs, except that if the vacancy occurs 150 days or less before a primary election or between the primary and general elections in odd-numbered years, the election shall be held with the primary or general election.

(3) If the vacancy occurs between the primary and general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term.

History: En. 23-4405 by Sec. 53, Ch. 365, L. 1977; R.C.M. 1947, 23-4405; amd. Sec. 209, Ch. 571, L. 1979; amd. Sec. 35, Ch. 250, L. 1985.

13-25-204. Certificates issued by governor. Upon receipt of the report of the canvass required by 13-15-507, the governor shall send a certificate of election to each person elected.

History: **En. Sec. 223, Ch. 368, L. 1969; R.C.M. 1947, 23-4403; amd. Sec. 53, Ch. 575, L. 1981.**

13-25-205. Nominations for special election. (1) When a special election is ordered to fill a vacancy in the office of United States senator or United States representative, each political party shall choose a candidate according to the rules of the party. Nominations by parties shall be made no later than 75 days before the date set for the election.

(2) Nominating petitions may be filed by independent candidates for the office up to 5:00 p.m. of the 75th day before the election.

History: **En. Sec. 210, Ch. 571, L. 1979; amd. Sec. 36, Ch. 250, L. 1985.**

CHAPTER 26

CONVENTION TO RATIFY AMENDMENTS TO UNITED STATES CONSTITUTION

Part 1 — Ratification of Amendments

13-26-101. Convention to be held.
13-26-102. Delegates to constitutional convention.
13-26-103. Nomination of delegates.
13-26-104. Determination of election results.
13-26-105. Ballot form.
13-26-106. Time for convention of delegates.
13-26-107. Operation of the convention.
13-26-108. Compensation of delegates and officers.
13-26-109. Certificate of result — transmission to secretary of state of United States.
13-26-110. Qualifications of petitioners and electors.
13-26-111. Federal acts to supersede state provisions concerning amendments.

Chapter Cross-References

Amendment of United States Constitution, Art. V, U.S. Const.

Definitions applicable to this chapter, 13-1-101.

Part 1

Ratification of Amendments

13-26-101. Convention to be held. If congress proposes an amendment to the constitution of the United States to be ratified by state convention, a convention shall be held.

History: **En. Sec. 236, Ch. 368, L. 1969; R.C.M. 1947, 23-4601.**

13-26-102. Delegates to constitutional convention. (1) The number of convention delegates shall be equal to the number of members in the legislature. Each district shall have delegates equal to the number of members it is entitled to in the legislature.

(2) Delegates shall be elected at the next primary or general election after congress has proposed the amendment or at a special election called by the governor.

(3) Except as otherwise provided in this chapter, the election shall be in accordance with the laws for the election of members of the legislature.

History: En. Sec. 237, Ch. 368, L. 1969; R.C.M. 1947, 23-4602.

Cross-References

Size of Legislature and representation of each district, Art. V, sec. 2, 14, Mont. Const.; Title 5, ch. 1.

13-26-103. Nomination of delegates. (1) Nominations for the office of delegate shall be by petition signed by not less than 100 voters of the district.

(2) Nominations shall be without political designation but shall be as "in favor of" or "opposed to" ratification of the proposed amendment.

(3) Petitions and acceptances shall be filed not less than 75 days prior to the election.

History: En. Sec. 238, Ch. 368, L. 1969; R.C.M. 1947, 23-4603; amd. Sec. 37, Ch. 250, L. 1985.

13-26-104. Determination of election results. The results of the election are determined as follows:

(1) The votes cast for each candidate "in favor of" ratification, the total votes cast for all candidates "in favor of" ratification, the votes cast for each candidate "opposed to" ratification, and the total votes cast for all candidates "opposed to" ratification shall be ascertained.

(2) From the side receiving the greater number of votes, those candidates (equal in number to the number of delegates to be elected) receiving the highest number of votes are elected.

History: En. Sec. 239, Ch. 368, L. 1969; R.C.M. 1947, 23-4604.

13-26-105. Ballot form. The official ballot form shall be prescribed by the secretary of state.

History: En. Sec. 240, Ch. 368, L. 1969; R.C.M. 1947, 23-4605.

13-26-106. Time for convention of delegates. Delegates shall meet at the state capitol on the first Monday in the month following the election at 10 a.m. and constitute a convention to act upon the proposed amendment.

History: En. Sec. 241, Ch. 368, L. 1969; R.C.M. 1947, 23-4606.

13-26-107. Operation of the convention. A majority of the total number of delegates constitutes a quorum. The convention:

(1) may choose a president, secretary, and other necessary officers;

(2) may make rules governing the procedure of the convention; and

(3) shall judge the qualifications and election of its members.

History: En. Sec. 243, Ch. 368, L. 1969; R.C.M. 1947, 23-4607.

13-26-108. Compensation of delegates and officers. Each delegate shall receive mileage and per diem as provided by law for members of the legislature. The secretary and other officers shall receive compensation fixed by the convention.

History: En. Sec. 242, Ch. 368, L. 1969; R.C.M. 1947, 23-4608.

Cross-References

Mileage and per diem provided to Legislators, 5-2-301.

13-26-109. Certificate of result — transmission to secretary of state of United States. When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States. A duplicate of the certificate shall be filed with the secretary of state of Montana.

History: En. Sec. 244, Ch. 368, L. 1969; R.C.M. 1947, 23-4609; amd. Sec. 211, Ch. 571, L. 1979.

13-26-110. Qualifications of petitioners and electors. Persons entitled to petition for nomination and vote at the election are determined by the laws on registration.

History: En. Sec. 245, Ch. 368, L. 1969; R.C.M. 1947, 23-4610.

Cross-References

Laws on registration, Title 13, ch. 2.

13-26-111. Federal acts to supersede state provisions concerning amendments. If congress, by resolution or statute, prescribes how the convention shall be constituted and held, this chapter is inoperative, and the convention shall be constituted and held as congress directs. All state officers are directed to take action to constitute the convention as authorized by congress and act as if acting under state statute.

History: En. Sec. 246, Ch. 368, L. 1969; R.C.M. 1947, 23-4611.

CHAPTER 27

BALLOT ISSUES

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13-27-410. Printing and distribution of voter information pamphlet.

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13-27-501. Secretary of state to certify ballot form — abbreviated ballot.
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Chapter Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Initiative for constitutional convention, Art. XIV, sec. 2, Mont. Const.

Constitutional amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Form for local government initiative and referendum, 7-5-132.

Form of petition calling for election on question of issuing county bonds, 7-7-2224.

Form of petition for creation of urban transportation district, 7-14-204.

Definitions applicable to this chapter, 13-1-101.

Initiative or referendum required to approve nuclear facility, 75-20-201.

Form of ballot to summarize improvements to drainage district assessments, 85-8-624.

Part 1
General Provisions

13-27-101. Establishment of initiative and referendum procedures. The right of the people to petition to enact laws by initiative, to petition to approve or reject by referendum any act of the legislature except an appropriation of money, to call for a vote on whether there shall be a constitutional convention, and to propose constitutional amendments by initiative as guaranteed by The Constitution of the State of Montana may be exercised through adherence to the procedures established in this chapter.

History: En. 37-115 by Sec. 1, Ch. 342, L. 1977; R.C.M. 1947, 37-115.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Initiative for constitutional convention, Art. XIV, sec. 2, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-102. Who may petition. A petition for the initiative, the referendum, or to call a constitutional convention may be signed only by a qualified elector of the state of Montana.

History: En. 37-116 by Sec. 2, Ch. 342, L. 1977; R.C.M. 1947, 37-116(part).

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

13-27-103. Sufficiency of signature. A signature may not be counted unless the elector has signed in substantially the same manner as on the voter registry card. If the elector is registered with a first and middle name, the use of an initial instead of either the first or middle name, but not both names, need not disqualify the signature. The signature may be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registry card as to provide reasonable certainty of its authenticity.

History: En. 37-116 by Sec. 2, Ch. 342, L. 1977; R.C.M. 1947, 37-116(part); amd. Sec. 1, Ch. 494, L. 1979.

Cross-References

Register of electors, 13-2-112.

13-27-104. Time for filing. Unless a specific time for filing is provided in the constitution, all petitions filed with the secretary of state, certified as provided by law, must be received before 5 p.m. of the third Friday of the fourth month prior to the election at which they are to be voted upon by the people.

History: En. 37-125 by Sec. 11, Ch. 342, L. 1977; R.C.M. 1947, 37-125; amd. Sec. 4, Ch. 359, L. 1991.

Cross-References

Time for filing of petition for initiative, Art. III, sec. 4, Mont. Const.

Time for filing of petition for referendum, Art. III, sec. 5, Mont. Const.

13-27-105. Effective date of initiative and referendum issues. (1) Unless the petition placing an initiative issue on the ballot states otherwise, an initiative issue, other than a constitutional amendment, approved by the people is effective on October 1 following approval. If the issue delegates rulemaking authority, it is effective no sooner than October 1 following approval.

(2) A constitutional amendment proposed by initiative or by the legislature and approved by the people is effective on July 1 following approval unless the amendment provides otherwise.

(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least 15% of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the people. An act that provides no

effective date and whose substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective October 1 following the election.

History: En. 37-137 by Sec. 23, Ch. 342, L. 1977; R.C.M. 1947, 37-137; amd. Sec. 1, Ch. 73, L. 1981; amd. Sec. 8, Ch. 79, L. 1983; amd. Sec. 16, Ch. 298, L. 1987.

Cross-References

Suspension by petition, Art. III, sec. 5, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

13-27-106. Violations — penalties. A person who knowingly makes a false entry upon a petition or affidavit required by this chapter or who knowingly signs a petition to place the same issue on the ballot at the same election more than once is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable.

History: En. 37-138 by Sec. 24, Ch. 342, L. 1977; R.C.M. 1947, 37-138.

Part 2

Form of Petitions

13-27-201. Form of petition generally. (1) A petition for the initiative, the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition sheets may not exceed 8 1/2 x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the measure to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet, the information required above must appear on both the front and back of the sheet. The complete text of the measure proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. The text of the measure must be in the bill form provided in the most recent issue of the bill drafting manual furnished by the legislative council. If sheets are circulated in sections, the complete text of the measure must be attached to each section.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(1), (2); amd. Sec. 1, Ch. 400, L. 1979.

13-27-202. Recommendations — approval of form required. (1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

(a) The text of the proposed measure must be submitted to the legislative council for review.

(b) The council staff shall review the text for clarity, consistency, and any other factors the council staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the council staff shall make to the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider any such recommendations and respond in writing to the council, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

(2) The legislative council shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy thereof available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the secretary of state. The secretary of state shall refer a copy of the petition sheet to the attorney general for his approval. The secretary of state and attorney general must each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any. The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative council unless the material not submitted to the legislative council is a substantive change not suggested by the legislative council.

(4) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the form of the petition. The secretary of state shall send written notice to the person who submitted the petition sheet of the approval or rejection within 28 days after submission of the petition sheet. If the petition is rejected, the notice must include reasons for rejection.

(5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures.

(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated in the form of the sample prepared by the secretary of state.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(3); amd. Sec. 2, Ch. 400, L. 1979; amd. Sec. 1, Ch. 488, L. 1981; amd. Sec. 1, Ch. 4, L. 1983; amd. Sec. 5, Ch. 359, L. 1991.

13-27-203. Numbering of petitions. The secretary of state shall serially number all submitted petitions that are approved as to form continuously from year to year. The numbering system shall distinguish the different types of petitions received and include provisions for numbering measures referred to the people by the legislature.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(4).

13-27-204. Petition for the initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by the initiative:

PETITION TO PLACE INITIATIVE NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing this petition is ....., this measure will appear on the next general election ballot. If a majority of voters vote for this measure at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following measure on the ...., 19..., general election ballot:

(Title of measure written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-118 by Sec. 4, Ch. 342, L. 1977; R.C.M. 1947, 37-118; amd. Sec. 2, Ch. 488, L. 1981.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-205. Petition for the referendum. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

PETITION TO PLACE REFERENDUM NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ...., Senate (House) Bill Number .... will appear on the next general election ballot. If a majority of voters vote for this measure at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ...., passed by the legislature on ...... on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet.

A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-119 by Sec. 5, Ch. 342, L. 1977; R.C.M. 1947, 37-119; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 488, L. 1981.

Cross-References

Referendum, Art. III, sec. 5, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-206. Petition for initiative for constitutional convention. (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there shall be a constitutional convention:

PETITION TO PLACE
INITIATIVE NO.____, CALLING FOR
A CONSTITUTIONAL CONVENTION, ON
THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is ....., the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention the legislature will call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the ...., 19..., general election ballot:

(Title of the initiative written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine or 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall also contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-120 by Sec. 6, Ch. 342, L. 1977; R.C.M. 1947, 37-120; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 4, Ch. 488, L. 1981.

Cross-References

Initiative for constitutional convention, Art. XIV, sec. 2, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-207. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for the initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL
AMENDMENT NO.____ ON
THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing the petition is ....., this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the ...., 19..., general election ballot:

(Title of the proposed constitutional amendment
written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-121 by Sec. 7, Ch. 342, L. 1977; R.C.M. 1947, 37-121; amd. Sec. 5, Ch. 488, L. 1981.

Cross-References

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-208. Petitions to be made available in each county election administrator's office. When the secretary of state sends written notice of the approval of the form of a petition as required under 13-27-202(4), he shall forward a copy of the petition, along with signature sheets, to the election administrator of each county. The election administrator shall make a copy of each approved petition available for reading and signing in his office during business hours in an election year until the petitions are submitted under 13-27-301. The secretary of state may charge the person who submitted the petition a fee sufficient to reimburse the secretary of state for the cost of providing copies of the petition and signature sheets to each county election administrator.

History: En. Sec. 1, Ch. 158, L. 1991.

Part 3

Submission and Processing of Petitions

13-27-301. Submission of petition sheets — withdrawal of signatures. (1) Signed sheets or sections of petitions shall be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than 9 months and no later than 4 weeks before the final date for filing the petition with the secretary of state.

(2) Signatures may be withdrawn from a petition for constitutional amendment, constitutional convention, initiative, or referendum up to the time of final submission of petition sheets as provided in subsection (1). The secretary of state shall prescribe the form to be used by an elector desiring to have his signature withdrawn from a petition.

History: En. 37-122 by Sec. 8, Ch. 342, L. 1977; R.C.M. 1947, 37-122(1); amd. Sec. 3, Ch. 400, L. 1979; (2)En. Sec. 15, Ch. 298, L. 1987; amd. Sec. 6, Ch. 359, L. 1991.

Cross-References

Election Administrator as registration official, 13-1-301.

Date of filing of petitions, 13-27-104.

13-27-302. Certification of signatures. An affidavit, in substantially the following form, shall be attached to each sheet or section submitted to the county official:

I, (Name of person who circulated this petition), affirm, or being first sworn, depose and say: that I circulated or assisted in circulating the petition to which this affidavit is attached and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, are the signatures of Montana electors who are registered at the address following their signature, and that the signers knew the contents of the petition before signing the same.

. . . .
(Signature of petition circulator)

. . . .
(Address of petition circulator)

Subscribed and sworn to before me this .... day of ....., 19...

. . . .
Seal (Person authorized to take oaths)

. . . .
(Title or notarial information)

History: En. 37-122 by Sec. 8, Ch. 342, L. 1977; R.C.M. 1947, 37-122(2); amd. Sec. 6, Ch. 488, L. 1981.

Cross-References

Officers who may administer oaths, 1-6-101.

13-27-303. Verification of signatures by county official — allocating voters following reapportionment — duplicate signatures. (1) Except as required by 13-27-104, within 4 weeks after receiving the sheets or sections of a petition, the county official shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(2) For the purpose of allocating the signatures of voters among the several legislative representative districts of the state as required to certify a petition for a ballot issue under the provisions of this chapter following the filing of a districting and apportionment plan under 5-1-111 and before members of the house of representatives have been elected and qualified under the plan, the legislative representative districts among which the signatures must be allocated must be those in existence when the plan was filed.

(3) Upon discovery of fraudulent signatures or duplicate signatures of an elector on any one issue, the election administrator may submit the name of the elector or the petition circulator, or both, to the county attorney to be investigated under the provisions of 13-27-106 and 13-35-207.

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(3), (4); amd. Sec. 4, Ch. 400, L. 1979; (2)En. Sec. 1, Ch. 512, L. 1983; amd. Sec. 17, Ch. 298, L. 1987.

Cross-References

Register of electors, 13-2-112.

13-27-304. County official to forward verified sheets. The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable ......, Secretary of State of the state of Montana:

I, ..., ... (title) of the County of ...., certify that I have examined the attached (section containing .... sheets) or (.... sheets) of the petition for (referendum, initiative, constitutional convention, or constitutional amendment) No. .... in the manner prescribed by law; and I believe that .... (number) signatures in Legislative Representative District No. .... (repeat for each district included in sheet or section) are valid; and I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and the post-office address and legislative representative district number is completed for each valid signature.

Signed: .... (Date) .... (Signature)
Seal .... (Title)

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(1).

Cross-References

Role of Secretary of State, Title 13, ch. 1, part 2.

13-27-305. Retention of copies by county official. The county official certifying the sheets or sections of a petition shall keep a copy of the sheets or sections certified in the official files of his office. The copies may be destroyed 3 months after the date of the election specified in the petition unless a court action is pending on the sufficiency of the petition.

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(2).

13-27-306. Challenge to signatures by elector of county. A registered elector of a county having reason to believe that signatures on a petition that were not among those actually compared with signatures in the registration records of the county are not genuine may file a sworn statement or affirmation of his belief and request for comparison of those signatures he believes are not genuine with the county official certifying the sheet or section of the petition. If any of the challenged signatures are not genuine, the county official must compare all signatures on that sheet or section and issue an amended certificate to the secretary of state, giving the correct number of valid signatures, on or before the deadline, as provided for in 13-27-104, for filing in the office of the secretary of state.

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(5); amd. Sec. 5, Ch. 400, L. 1979.

13-27-307. Consideration and tabulation of signatures by secretary of state. (1) The secretary of state shall consider and tabulate only such signatures on petitions as are certified by the proper county official, and each such certificate is prima facie evidence of the facts stated therein. However, the secretary of state may consider and tabulate any signature not certified by the county official that is certified by a notary public of the county in which the signer resides to be the genuine signature of an elector legally qualified to sign the petition.

(2) The official certificate of the notary public for any signature not certified as valid by the county official shall be in substantially the following form:

State of Montana)
) ss.
County of ....)

I, ... (name), a duly qualified and acting notary public in and for the above-named county and state, do hereby certify that I am personally acquainted with each of the following-named electors whose signatures are affixed to the annexed (petition) (copy of a petition) and I know of my own knowledge that they are registered electors of the state of Montana and of the county and legislative district written after their names in the petition and that their post-office addresses are correctly stated therein.

. . . . (Names of such electors)

In testimony whereof, I have hereunto set my hand and official seal this .... day of ......, 19...

. . . . (Signature)

Seal . . . . (Notarial information)

History: En. 37-124 by Sec. 10, Ch. 342, L. 1977; R.C.M. 1947, 37-124; amd. Sec. 212, Ch. 571, L. 1979.

Cross-References

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-308. Certification of petition to governor. When sheets or sections of a petition for referendum, initiative, constitutional convention, or constitutional amendment containing a sufficient number of signatures have been filed with the secretary of state within the time required by the constitution or by law, he shall immediately certify to the governor that the completed petition has been officially filed.

History: En. 37-126 by Sec. 12, Ch. 342, L. 1977; R.C.M. 1947, 37-126(part).

13-27-309. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 37-126 by Sec. 12, Ch. 342, L. 1977; R.C.M. 1947, 37-126(part).

13-27-310. Transmittal of issues referred by the legislature and ballot forms to the attorney general. (1) The secretary of state shall transmit a copy of the form in which a ballot issue proposed by petition will appear on the ballot to the attorney general on the same day the completed petition is certified to the governor.

(2) The secretary of state shall transmit a copy of an act referred to the people or a constitutional amendment proposed by the legislature and a copy of the form in which the issue will appear on the ballot to the attorney general no later than 6 months before the election at which the issue will be voted on by the people.

(3) If the ballot form is not approved by the attorney general pursuant to 13-27-313, the secretary of state shall immediately submit a new ballot form to the attorney general.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(1), (2); amd. Sec. 6, Ch. 400, L. 1979.

Cross-References

Approval of form required, 13-27-202.

13-27-311. Publication of proposed constitutional amendments. (1) If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall have the proposed amendment or amendments published in full twice each month for 2 months previous to the election at which they are to be voted upon by the people, in not less than one newspaper of general circulation in each county.

(2) The secretary of state may arrange for newspaper, radio, or television publication of proposed constitutional amendments in each county. A summary of the amendment as provided by the attorney general, as described in 13-27-312 or 13-27-315, would suffice for the publication required by this section and should be made at least twice each month for 2 months previous to the election.

History: En. Sec. 12, Ch. 368, L. 1969; amd. Sec. 1, Ch. 38, L. 1973; amd. Sec. 26, Ch. 342, L. 1977; amd. Sec. 6, Ch. 365, L. 1977; R.C.M. 1947, 23-2802; amd. Sec. 213, Ch. 571, L. 1979.

Cross-References

Amendment by referendum, Art. XIV, sec. 8, Mont. Const.

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

13-27-312. Review of petition by attorney general — preparation of statements — fiscal note. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and, if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of such effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note.

(2) If the petition form is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general shall prepare:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(3) The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, such statement to be used on the petition and ballot if the measure is placed on the ballot.

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure.

(5) The statement of purpose, unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to but not limited to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

(7) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within 21 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement, if applicable, to the secretary of state within 21 days after receipt of the petition by the attorney general.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(3); amd. Sec. 7, Ch. 400, L. 1979; amd. Sec. 1, Ch. 336, L. 1981; amd. Sec. 7, Ch. 488, L. 1981; amd. Sec. 10, Ch. 3, L. 1985; amd. Sec. 7, Ch. 359, L. 1991.

Cross-References

Secretary of State to certify ballot form, 13-27-501.

13-27-313. Review of ballot forms by attorney general. The attorney general shall examine each ballot form submitted to his office pursuant to 13-27-310 and within 20 days of receipt of the ballot form shall notify the secretary of state of his approval or rejection of the ballot form. If the ballot form is rejected, the attorney general shall approve or reject a new ballot form submitted by the secretary of state pursuant to 13-27-310(3) within 5 days of receiving the new form.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(4); amd. Sec. 8, Ch. 400, L. 1979.

13-27-314. Repealed. Sec. 19, Ch. 400, L. 1979.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(5).

13-27-315. Statements by attorney general on issues referred by legislature. (1) Upon receipt of a copy of a ballot form under 13-27-310(2) for an issue proposed by the legislature, the attorney general shall order a fiscal note as provided in 13-27-312(1) if the issue has an effect on the revenues, expenditures, or the fiscal liability of the state. At the same time the explanatory statement is prepared under subsection (2), the attorney general shall prepare a fiscal statement of no more than 50 words to be forwarded to the secretary of state at the same time as the explanatory statement.

(2) At the same time the attorney general, pursuant to 13-27-313, informs the secretary of state of the approval or rejection of a ballot form for an issue proposed by the legislature, the attorney general shall forward to the secretary of state a statement, not exceeding 100 words, expressing a true and impartial explanation of the purpose of the measure in plain, easily understood language. The statement may not be an argument and may not be written to create a prejudice for or against the issue. The statement prepared under this section is known as the attorney general's explanatory statement.

(3) If statements of the implication of a vote for or against a ballot issue have not been provided by the legislature, the attorney general shall prepare

the statements. Requirements for statements of implication for ballot issues referred by the legislature are the same as those provided in 13-27-312 for other ballot issues. Statements of implication prepared by the attorney general must be returned to the secretary of state no later than the time specified for approval of the ballot form.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(6); amd. Sec. 9, Ch. 400, L. 1979; amd. Sec. 2, Ch. 336, L. 1981.

13-27-316. Court review of attorney general statements. (1) If the proponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, or the fiscal statement formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of receipt of the notice from the secretary of state provided for in 13-27-202, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(2) If the opponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, or the fiscal statement formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(3) (a) Notice shall be served upon the secretary of state and upon the attorney general. The action takes precedence over other cases and matters in the district court. The court shall examine the proposed measure and the challenged statement and shall as soon as possible render a decision and certify to the secretary of state a statement which the court determines will meet the requirements of 13-27-312.

(b) A statement certified by the court shall be placed on the petition for circulation and on the official ballot.

(4) A copy of the petition in final form must be filed in the office of the secretary of state by the proponents.

(5) Any party may appeal the order of the district court to the Montana supreme court by filing a notice of appeal within 5 days of the date of the order of the district court.

History: En. Sec. 10, Ch. 400, L. 1979; amd. Sec. 3, Ch. 336, L. 1981.

Part 4

Voter Information Pamphlets

13-27-401. Voter information pamphlet. (1) The secretary of state shall prepare for printing a voter information pamphlet containing the following information for each ballot issue to be voted on at an election, as applicable:

(a) ballot title, fiscal statement if applicable, and complete text of the issue;

(b) the form in which the issue will appear on the ballot;

(c) arguments advocating approval and rejection of the issue; and

(d) rebuttal arguments.

(2) The pamphlet must also contain a notice advising the recipient where additional copies of the pamphlet may be obtained.

(3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the information in the order which seems most appropriate, but the information for all issues in the pamphlet must be presented in the same order.

(4) The secretary of state may prescribe by rule the format and manner of submission of the arguments concerning the ballot issue.

History: Ap. p. Sec. 14, Ch. 342, L. 1977; Sec. 37-128, R.C.M. 1947; Ap. p. Sec. 74, Ch. 365, L. 1977; Sec. 37-111, R.C.M. 1947; R.C.M. 1947, 37-111(1), (2), 37-128(1); amd. Sec. 11, Ch. 400, L. 1979; amd. Sec. 4, Ch. 336, L. 1981; amd. Sec. 10, Ch. 390, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 390 inserted (4) authorizing Secretary of State to prescribe by rule format and manner of submission of arguments concerning ballot issue; and made minor changes in style. Amendment effective July 1, 1993.

13-27-402. Committees to prepare arguments for and against ballot issues. (1) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments shall be submitted to the secretary of state by committees appointed as provided in this section.

(2) The following committees shall be composed of one senator known to favor the measure, appointed by the president of the senate; one representative known to favor the measure, appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members:

(a) the committee advocating approval of an act referred to the people or of a constitutional amendment proposed by the legislature; or

(b) the committee advocating approval of an act referred to the people by referendum petition.

(3) The committee advocating rejection of an act referred to the people or of a constitutional amendment proposed by the legislature shall be composed of one senator appointed by the president of the senate; one representative appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members. Whenever possible, the members shall be known to have opposed the issue.

(4) The following shall be three-member committees and shall be appointed by the person submitting the petition to the secretary of state under the provisions of 13-27-202:

(a) the committee advocating approval of a ballot issue proposed by any type of initiative petition; and

(b) the committee advocating rejection of any ballot issue that is a legislative act referred to the people by referendum petition.

(5) A committee advocating rejection of a ballot issue proposed by any type of initiative petition shall be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member shall be appointed by the first four members. All members shall be known to favor rejection of the issue.

(6) No person may be required to serve on any committee under this section, and the person making an appointment must have written acceptance of appointment from the appointee.

History: En. 37-128 by Sec. 14, Ch. 342, L. 1977; R.C.M. 1947, 37-128(2); amd. Sec. 214, Ch. 571, L. 1979; amd. Sec. 1, Ch. 549, L. 1983; amd. Sec. 18, Ch. 298, L. 1987.

13-27-403. Appointment to committee. (1) Except as provided in subsection (2), appointments to committees advocating approval or rejection of an act referred to the people, a constitutional amendment proposed by the legislature, or a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition shall be made no later than 6 months before the election at which the ballot issue will be voted on by the people.

(2) Appointments to committees advocating approval or rejection of a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition that is approved less than 7 months before the election at which the ballot issue will be voted on by the people shall be made no later than 30 days after the measure is approved for circulation by the secretary of state. All persons responsible for appointing members to the committee shall submit to the secretary of state the names and addresses of the appointees no later than the date set by this subsection. Such submission must include the written acceptance of appointment from each appointee required by section 13-27-402(6).

(3) All appointees to a committee pursuant to subsection (1) must be notified by the secretary of state by certified mail, with return receipt requested, no later than 5 days after the deadline set for appointment of committee members, of the deadlines for submission of the committee's arguments.

(4) All appointees to a committee pursuant to subsection (2) must be notified by the secretary of state by certified mail, with return receipt requested, no later than 35 days after the petition has been approved for circulation, of the deadlines for submission of the committee's arguments.

(5) Committees appointed under subsections (2)(b), (4), and (5) of 13-27-402 must be vacated and have no further obligation if the ballot measure for which they were appointed fails to receive sufficient signatures to place it on the ballot. The secretary of state shall notify the committee members of the failure of a ballot measure to receive sufficient signatures no later than 3 days after the filing deadline set in 13-27-104.

History: En. 37-129 by Sec. 15, Ch. 342, L. 1977; R.C.M. 1947, 37-129(1), (2); amd. Sec. 2, Ch. 549, L. 1983; amd. Sec. 19, Ch. 298, L. 1987; amd. Sec. 8, Ch. 359, L. 1991.

13-27-404. Committee chairman. The appointee of the president of the senate is the chairman of any committee to which that officer makes an appointment. The appointing authority for other committees shall name a chairman at the time the appointments are made.

History: En. 37-129 by Sec. 15, Ch. 342, L. 1977; R.C.M. 1947, 37-129(3).

13-27-405. Committee expenses. Each committee is entitled to receive funds for the preparation of arguments and expenses of members not to exceed $100 for a three-member committee and $200 for a five-member committee. Itemized claims for actual expenses incurred, approved by a majority of the committee, shall be submitted to the secretary of state for payment from funds appropriated for that purpose.

History: En. 37-130 by Sec. 16, Ch. 342, L. 1977; R.C.M. 1947, 37-130; amd. Sec. 12, Ch. 400, L. 1979.

13-27-406. Limitation on length of argument — time of filing. An argument advocating approval or rejection of a ballot issue is limited to 500 words and shall be filed, in typewritten form, with the secretary of state no later than 85 days before the election at which the issue will be voted on by the people. A majority of the committee responsible for preparation must approve and sign each argument filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline.

History: En. 37-131 by Sec. 17, Ch. 342, L. 1977; R.C.M. 1947, 37-131; amd. Sec. 13, Ch. 400, L. 1979.

13-27-407. Rebuttal arguments. The secretary of state shall provide copies of the arguments advocating approval or rejection of a ballot issue to the members of the adversary committee no later than 1 day following the filing of both the approval and rejection arguments for the issue in his office. The committees may prepare rebuttal arguments no longer than 250 words that shall be filed, in typewritten form, with the secretary of state no later than 10 days after the deadline for filing the original arguments. Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument shall be approved and signed by a majority of the committee responsible for its preparation. Separate signed letters of approval may be submitted in the same manner as for the original arguments.

History: En. 37-132 by Sec. 18, Ch. 342, L. 1977; R.C.M. 1947, 37-132.

13-27-408. Rejection of improper arguments. The secretary of state shall reject, with the approval of the attorney general, an argument or other matter held to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter; any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward, or that tends to cast ridicule or shame upon, a group of persons by reason of race, color, religion, or sex; or any matter not allowed to be sent through the mail. Such arguments may not be filed or printed in the voter information pamphlet.

History: En. 37-133 by Sec. 19, Ch. 342, L. 1977; R.C.M. 1947, 37-133(1).

13-27-409. Liability for contents of argument. Nothing in this chapter relieves an author of any argument from civil or criminal responsibility for statements contained in an argument printed in the voter information pamphlet.

History: En. 37-133 by Sec. 19, Ch. 342, L. 1977; R.C.M. 1947, 37-133(2).

Cross-References

Civil liability for libel, Title 27, ch. 1, part 8.

Criminal defamation, 45-8-212.

13-27-410. Printing and distribution of voter information pamphlet. (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues to be submitted to the people at least 90 days before the election at which they will be submitted. The requisition must include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to every voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract must require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 30 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing must take place no later than 2 weeks before the election.

(5) Ten copies of the voter information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues.

History: En. 37-134 by Sec. 20, Ch. 342, L. 1977; R.C.M. 1947, 37-134; amd. Sec. 14, Ch. 400, L. 1979; amd. Sec. 11, Ch. 390, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 390 at end of second sentence in (4), after "weeks", substituted "before the election" for "after the pamphlets are received from the printer"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Election Administrator as registration official, 13-1-301.

Part 5
Election Procedure

13-27-501. Secretary of state to certify ballot form — abbreviated ballot. (1) The secretary of state shall furnish to the official of each county responsible for preparation and printing of the ballots, at the same time as he certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot.

(2) Except as provided in subsection (4), the secretary of state shall list for each issue:

(a) the number;

(b) the method of placement on the ballot;

(c) the title;

(d) the attorney general's explanatory statement if applicable;

(e) the fiscal statement if applicable; and

(f) the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, when required to do so, shall include one of the following statements to identify why the issue has been placed on the ballot:

(a) an act referred by the legislature;
(b) an amendment to the constitution proposed by the legislature;
(c) an act of the legislature referred by referendum petition; or
(d) a law or constitutional amendment proposed by initiative petition.

(4) The county election administrator may, at least 14 days prior to the deadline for ballot certification by the secretary of state, request in writing that he be furnished an abbreviated form of the certified ballot. The secretary of state shall furnish to all counties from which he has received such a request a certified ballot containing only the information in subsections (2)(a), (2)(e), and (2)(f). If the county election administrator requests that the abbreviated ballot be prepared, copies of the information contained in subsections (2)(a) through (2)(f) must be distributed to each elector by an election judge as the elector enters the polling place.

History: En. 37-135 by Sec. 21, Ch. 342, L. 1977; R.C.M. 1947, 37-135(1); amd. Sec. 15, Ch. 400, L. 1979; amd. Sec. 5, Ch. 336, L. 1981; amd. Sec. 1, Ch. 669, L. 1983; (4)En. Sec. 2, Ch. 669, L. 1983.

Cross-References

Role of Secretary of State, Title 13, ch. 1, part 2.

Title of ballot issue, 13-27-312, 13-27-316.

13-27-502. Preparation of ballots by county officials. Each of the county officials responsible for the preparation and printing of the ballots shall print the ballot issues on the official ballot in the form and order in which the issues have been certified by the secretary of state. All ballot issues shall be placed on the official ballot prescribed by 13-12-207, 13-12-212, and 13-17-206 unless specific written approval by the secretary of state for placing the ballot issues on a separate ballot is received by the official responsible for printing the ballot. The secretary of state may issue such approval only when the number of issues to be voted on at an election makes it impractical to print the entire ballot, including the ballot issues, on the official ballot as prescribed by 13-12-207, 13-12-212, and 13-17-206.

History: En. 37-135 by Sec. 21, Ch. 342, L. 1977; R.C.M. 1947, 37-135(2); amd. Sec. 16, Ch. 400, L. 1979; amd. Sec. 54, Ch. 575, L. 1981.

13-27-503. Determination of result of election. The votes on ballot issues shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned. The abstract of votes on ballot issues shall be prepared and returned to the secretary of state in the manner provided by 13-15-501 for abstract of votes for state officers. The board of state canvassers shall proceed within 20 days after the election at which such ballot issues are voted upon and, at the same time as the votes for state officers are canvassed, canvass the votes given for each ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in his office a statement of the canvass, giving the number and title of each issue, the whole number of votes cast in the state for and against each ballot issue, and the effective date of each ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor.

History: En. 37-136 by Sec. 22, Ch. 342, L. 1977; R.C.M. 1947, 37-136(1); amd. Sec. 55, Ch. 575, L. 1981.

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

Procedure for vote counting, Title 13, ch. 15.

Effective date of ballot issues, 13-27-105.

13-27-504. Copy of approved issues to be sent to legislative council. The secretary of state shall send a certified copy of all ballot issues which have been approved by a majority of those voting on the issue and a copy of the statement of the canvass to the executive director of the legislative council at the same time he transmits a certified copy of the statement of the canvass to the governor.

History: En. 37-136 by Sec. 22, Ch. 342, L. 1977; R.C.M. 1947, 37-136(2).

Cross-References

Publication and updating of code — Code Commissioner, Title 1, ch. 11.

Legislative Council and publication of laws, Title 5, ch. 11.

CHAPTERS 28 THROUGH 34

RESERVED

CHAPTER 35

ELECTION AND CAMPAIGN PRACTICES AND CRIMINAL PROVISIONS

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13-35-301. Adoption of code of fair campaign practices.
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Chapter Cross-References

Montana Recall Act, Title 2, ch. 16, part 6.

Promise of support or opposition at future election by lobbyist, 5-7-102.

Elected official's business disclosure statement, 5-7-213.

City officers and employees — political activity, 7-3-1254, 7-3-4256, 7-3-4265.

Role and duties of County Clerk and Recorder, 7-4-2611.

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Power of County Attorney to investigate violations of this chapter, 13-37-125.

Bribery and corrupt influence, Title 45, ch. 7, part 1.

Limitation on political activity of employee of Department of Fish, Wildlife, and Parks, 87-1-204.

Part 1
General Provisions

13-35-101. Election code not to supersede criminal code — statute of limitations. (1) The penalty provisions of the election laws of this state are intended to supplement and not to supersede the provisions of the Montana Criminal Code.

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of the election laws are those specified in 45-1-205.

History: En. 23-47-101 by Sec. 1, Ch. 334, L. 1977; R.C.M. 1947, 23-47-101.

Cross-References

Political contributions of insurers prohibited, 33-18-305.

Montana Criminal Code, Title 45.

13-35-102. Trivial benefits not covered by criminal provisions. It is not the intent of the election laws of this state to criminalize activities involving trivial benefits incidental to the campaign process which involve no substantial risk of undermining the election process.

History: En. 23-47-102 by Sec. 2, Ch. 334, L. 1977; R.C.M. 1947, 23-47-102.

13-35-103. Violations as misdemeanor. A person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor.

History: En. 23-47-103 by Sec. 3, Ch. 334, L. 1977; R.C.M. 1947, 23-47-103.

Cross-References

"Knowingly" and "misdemeanor" defined, 45-2-101.

Misdemeanor penalty, 46-18-212.

13-35-104. Attempt as a violation. An attempt, as defined in 45-4-103, to violate a provision of the election laws of this state is itself a violation of the election laws and is punishable as provided in 45-4-103.

History: En. 23-47-104 by Sec. 4, Ch. 334, L. 1977; R.C.M. 1947, 23-47-104.

13-35-105. Aiding and abetting. A person who is legally accountable, as provided in 45-2-302, for the conduct of another which violates a provision of the election laws of this state is also guilty of a violation of that provision.

History: En. 23-47-105 by Sec. 5, Ch. 334, L. 1977; R.C.M. 1947, 23-47-105.

13-35-106. Ineligibility to hold office because of conviction. In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office in the state of Montana until his final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until his final discharge from state supervision;

(3) if an elected official or a candidate is adjudicated to have violated any provision of this title, except 13-35-207(9), he shall be removed from nomination or office, as the case may be, even though he was regularly nominated or elected.

History: En. 23-47-106 by Sec. 6, Ch. 334, L. 1977; R.C.M. 1947, 23-47-106; amd. Sec. 215, Ch. 571, L. 1979.

Cross-References

Salaries withheld when title contested, 2-16-202.

Vacancy created by removal, Title 2, ch. 16, part 5.

Definition of "candidate" and "public office", 13-1-101.

Removal for violation of Title 13, ch. 37, 13-37-130.

13-35-107. Voiding election. (1) If a court finds that the violation of any provision of this title by any person probably affected the outcome of any election, the result of that election may be held void and a special election held within 75 days of that finding. If the violation occurred during a primary election, the court may direct the selection of a new candidate according to the provisions of state law relating to the filling of vacancies on the general election ballot. Except as provided in subsection (2), an action to void an election shall be commenced within 1 year of the date of the election in question.

(2) An action to void a bond election shall be commenced within 60 days of the date of the election in question.

History: En. 23-47-107 by Sec. 7, Ch. 334, L. 1977; R.C.M. 1947, 23-47-107; amd. Sec. 216, Ch. 571, L. 1979; amd. Sec. 38, Ch. 250, L. 1985.

Cross-References

Vacancy created by declaring election void, 2-16-501.

Procedure for filling vacancies on general election ballot, 13-10-327.

13-35-108. Powers of district court. In any action brought under the election laws of this state, the appropriate district court may enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws.

History: En. 23-47-108 by Sec. 8, Ch. 334, L. 1977; R.C.M. 1947, 23-47-108.

Cross-References

Injunctions, Title 27, ch. 19.

Part 2
Specific Provisions

Part Cross-References

Elected official's business disclosure statement, 5-7-213.

Ineligibility to hold public office because of conviction, 13-35-106.

Voiding election under certain circumstances, 13-35-107.

Political contributions of insurers prohibited, 33-18-305.

13-35-201. Electors and ballots. (1) An elector may not show the contents of his ballot to anyone after it is marked. No elector may place any mark upon the ballot by which it may be identified as the one voted by him.

(2) An elector may not receive a ballot from any person other than an election judge and may not vote any ballot except one received from an election judge. No person other than an election judge may deliver a ballot to an elector.

(3) No person may solicit an elector to show his ballot after it is marked.

(4) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to an election judge.

History: En. 23-47-109 by Sec. 9, Ch. 334, L. 1977; R.C.M. 1947, 23-47-109.

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

13-35-202. Conduct of election officials and election judges. An election officer or judge of an election may not:

(1) deposit in a ballot box a ballot on which the official stamp, as provided by law, does not appear;

(2) prior to putting the ballot of an elector in the ballot box, attempt to find out any name on the ballot or open or examine the folded ballot of an elector;

(3) look at any mark made by the elector upon the ballot;

(4) make or place any mark or device on any folded ballot with the intent to ascertain how the elector has voted;

(5) allow any individual other than the elector to be present at the marking of the ballot except as provided in 13-13-118 and 13-13-119; or

(6) make a false statement in a certificate regarding affirmation.

History: **En. 23-47-110 by Sec. 10, Ch. 334, L. 1977; R.C.M. 1947, 23-47-110; amd. Sec. 217, Ch. 571, L. 1979.**

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.

Warning notice to be posted at polling place, 13-13-113.

Indicating challenged elector not a violation, 13-13-311.

Violation as misdemeanor, 13-35-103.

13-35-203. Interference with officials. A person who, in any manner, interferes with the officers holding an election or conducting a canvass so as to prevent the election or canvass from being fairly held and lawfully conducted is guilty of obstruction of a public servant and is punishable as provided in 45-7-302.

History: **En. 23-47-111 by Sec. 11, Ch. 334, L. 1977; R.C.M. 1947, 23-47-111.**

13-35-204. Official misconduct. A person charged with performance of any duty under the provisions of the election laws of this state is guilty of official misconduct and is punishable as provided in 45-7-401 whenever the person:

(1) knowingly neglects or refuses to perform that duty; or

(2) knowingly and fraudulently acts, in his official capacity, in contravention or violation of any provision of the election laws.

History: **En. 23-47-112 by Sec. 12, Ch. 334, L. 1977; R.C.M. 1947, 23-47-112.**

13-35-205. Tampering with election records and information. A person is guilty of tampering with public records or information and is punishable as provided in 45-7-208 whenever the person:

(1) suppresses any declaration or certificate of nomination which has been filed;

(2) purposely causes the vote on a machine to be incorrectly recorded as to the candidate or ballot issue voted on;

(3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;

(4) changes any ballot after the same has been deposited in the ballot box or adds any ballot to those legally polled at an election, either before or after the ballots have been counted, with the purpose of changing the result of the election;

(5) causes any name to be placed on the registry lists other than in the manner provided by this title; or

(6) changes a poll list or checklist.

History: **En. 23-47-113 by Sec. 13, Ch. 334, L. 1977; R.C.M. 1947, 23-47-113.**

Cross-References

Declaration for nomination, 13-10-201.

Certificates of nomination or election, 13-15-406, 13-15-504.

13-35-206. Injury to election equipment, materials, and records. A person is guilty of criminal mischief or tampering with public records and information, as appropriate, and is punishable as provided in 45-6-101 or 45-7-208, as applicable, whenever the person:

(1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in accordance with the provisions of the law;

(2) during an election:

(a) removes or defaces the cards printed for the instruction of the voters; or

(b) removes or destroys any of the supplies or other conveniences placed in the booths or compartments for the purpose of enabling a voter to prepare his ballot;

(3) removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election;

(4) carries away or destroys any poll lists, checklists, ballots, or ballot boxes for the purpose of disrupting or invalidating an election;

(5) knowingly detains, mutilates, alters, or destroys any election returns;

(6) mutilates, secretes, destroys, or alters election records, except as provided by law;

(7) tampers with, disarranges, defaces, injures, or impairs a voting machine;

(8) mutilates, injures, or destroys any ballot or appliance used in connection with a voting machine; or

(9) fraudulently defaces or destroys a declaration or certificate of nomination.

History: En. 23-47-114 by Sec. 14, Ch. 334, L. 1977; R.C.M. 1947, 23-47-114.

Cross-References

Posting of election lists and instruction cards, 13-13-112.

Warning notice to be posted at polling place, 13-13-113.

13-35-207. Deceptive election practices. A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

(1) falsely represents his name or other information required upon his registry card and causes registration with the card;

(2) signs a registry card knowingly witnessing any false or misleading statement;

(3) knowingly causes a false statement, certificate, or return of any kind to be signed;

(4) falsely makes a declaration or certificate of nomination;

(5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;

(6) forges or falsely makes the official endorsement of a ballot;

(7) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;

(8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;

(9) signs a name other than his own to a petition, signs more than once for the same measure, or signs a petition while not being a qualified elector of the state; or

(10) makes a false oath or affidavit where an oath or affidavit is required by law.

History: En. 23-47-115 by Sec. 15, Ch. 334, L. 1977; R.C.M. 1947, 23-47-115; amd. Sec. 218, Ch. 571, L. 1979.

Cross-References

Declaration for nomination, 13-10-201.

Indicating challenged elector not a violation, 13-13-311.

Criminal provisions relating to signing ballot issues, 13-27-106.

13-35-208. Deceiving an elector. A person who deceives an elector voting under 13-13-118 or 13-13-119 is guilty of a misdemeanor.

History: En. 23-47-116 by Sec. 16, Ch. 334, L. 1977; R.C.M. 1947, 23-47-116; amd. Sec. 56, Ch. 575, L. 1981.

Cross-References

Misdemeanor penalty, 46-18-212.

13-35-209. Fraudulent registration. (1) No person may knowingly cause, procure, or allow himself to be registered in the official register of any election district of any county knowing himself not to be entitled to such registration.

(2) No person may falsely personate another and cause the person so personated to be registered.

(3) When, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the register of any county without being qualified for such registration, the court shall order such registration canceled.

History: En. 23-47-117 by Sec. 17, Ch. 334, L. 1977; R.C.M. 1947, 23-47-117.

Cross-References

Abuse of electoral process, Art. IV, sec. 3, Mont. Const.

Registration, Title 13, ch. 2.

Violation as misdemeanor, 13-35-103.

13-35-210. Limits on voting rights. (1) No person may vote who is not entitled to vote. No person may vote more than once at an election.

(2) No person may, for any election, apply for a ballot in the name of some other person, whether it be the name of a living, dead, or fictitious person.

History: En. 23-47-118 by Sec. 18, Ch. 334, L. 1977; R.C.M. 1947, 23-47-118.

Cross-References

Abuse of electoral process, Art. IV, sec. 3, Mont. Const.

Qualifications of voter, 13-1-111.

Violation as misdemeanor, 13-35-103.

13-35-211. Electioneering — soliciting information from electors. (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) No person may buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

(3) No person within a polling place or any building in which an election is being held may solicit from an elector, before or after he has marked his ballot and returned it to an election judge, information as to whether the elector intends to vote or has voted for or against a candidate or ballot issue.

History: En. 23-47-119 by Sec. 19, Ch. 334, L. 1977; R.C.M. 1947, 23-47-119; amd. Sec. 219, Ch. 571, L. 1979; amd. Sec. 1, Ch. 192, L. 1985; amd. Sec. 1, Ch. 216, L. 1989.

Cross-References

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

13-35-212. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-120 by Sec. 20, Ch. 334, L. 1977; R.C.M. 1947, 23-47-120.

13-35-213. Preventing public meetings of electors. (1) A person who, by threats, intimidations, or violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions is guilty of a misdemeanor.

(2) A person who willfully disturbs or breaks up a public meeting of electors or others, lawfully being held for the purpose of considering public questions, or a public school meeting is guilty of a misdemeanor.

History: En. 23-47-121 by Sec. 21, Ch. 334, L. 1977; R.C.M. 1947, 23-47-121.

Cross-References

Misdemeanor penalty, 46-18-212.

13-35-214. Illegal influence of voters. No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for any person on behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument, in order to aid or promote his nomination or election, except that he may publicly announce or define what is his choice or purpose in relation to an election in which he may be called to take part, if elected.

History: En. 23-47-122 by Sec. 22, Ch. 334, L. 1977; R.C.M. 1947, 23-47-122.

Cross-References

City elections — improper influence of voters, 7-3-4265.

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

Bribery in official and political matters, 45-7-101.

Threats and other improper influence in official and political matters, 45-7-102.

13-35-215. Illegal consideration for voting. No person, directly or indirectly, by himself or by any other person in his behalf, may:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person;

(2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election:

(a) receive any money, gift, loan, valuable consideration, office, place, or employment; or

(b) approach any candidate or any agent or person representing or acting on behalf of any candidate and ask for or offer to receive any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person.

History: En. 23-47-123 by Sec. 23, Ch. 334, L. 1977; R.C.M. 1947, 23-47-123; amd. Sec. 220, Ch. 571, L. 1979.

Cross-References

Violation as misdemeanor, 13-35-103.

Bribery in official and political matters, 45-7-101.

13-35-216. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-124 by Sec. 24, Ch. 334, L. 1977; R.C.M. 1947, 23-47-124.

13-35-217. Officers not to influence voter. No officer, while acting in his official capacity, may, by menace, reward, or promise of reward, induce or attempt to induce any elector to cast a vote contrary to his original intention or desire.

History: En. 23-47-125 by Sec. 25, Ch. 334, L. 1977; R.C.M. 1947, 23-47-125; amd. Sec. 57, Ch. 575, L. 1981.

Cross-References

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

13-35-218. Coercion or undue influence of voters. (1) No person, directly or indirectly, by himself or any other person in his behalf, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) No person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of his religious duty or the interest of any corporation, church, or other organization.

(3) No person may, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or thereby compel, induce, or prevail upon any elector to give or to refrain from giving his vote at any election.

(4) No person may, in any manner, interfere with a voter lawfully exercising his right to vote at an election so as to prevent the election from being fairly held and lawfully conducted.

(5) No person on election day may obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.

History: En. 23-47-126 by Sec. 26, Ch. 334, L. 1977; R.C.M. 1947, 23-47-126; amd. Sec. 1, Ch. 561, L. 1981.

Cross-References

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

Threats and improper influence in political matters, 45-7-102.

13-35-219. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-127 by Sec. 27, Ch. 334, L. 1977; R.C.M. 1947, 23-47-127.

13-35-220. Bribing members of political gatherings. (1) No person may give or offer a bribe to any officer or member of any legislative caucus, political convention, or political gathering of any kind held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another. No person who is a member of any of the bodies mentioned in this section may receive or offer to receive any such bribe.

(2) A violation of this section is punishable as provided in 45-7-101(3).

History: En. 23-47-128 by Sec. 28, Ch. 334, L. 1977; R.C.M. 1947, 23-47-128.

Cross-References

Definition of "bribe", 1-1-207.

13-35-221. Improper nominations. (1) No person may pay or promise valuable consideration to another, in any manner or form, for the purpose of inducing him to be or to refrain from or to cease being a candidate, and no person may solicit or receive any payment or promise from another for such purpose.

(2) No person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in subsection (1), may:

(a) allow himself to be nominated or refuse to allow himself to be nominated as a candidate at an election;

(b) become, by himself or in combination with any other person or persons, a candidate for the purpose of defeating the nomination or election of any other person, without a bona fide intent to obtain the office; or

(c) withdraw if he has been so nominated.

(3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining the officer whose duty it is to prepare official ballots for a nominating election from placing the name of a person thereon as a candidate for nomination to any office if the judge is convinced that:

(a) the person has sought the nomination or seeks to have his name presented to the voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive; and

(b) his candidacy for the nomination is not in good faith.

History: En. 23-47-129 by Sec. 29, Ch. 334, L. 1977; R.C.M. 1947, 23-47-129.

Cross-References

Violation as misdemeanor, 13-35-103.

13-35-222. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-130 by Sec. 30, Ch. 334, L. 1977; R.C.M. 1947, 23-47-130.

13-35-223. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-131 by Sec. 31, Ch. 334, L. 1977; R.C.M. 1947, 23-47-131.

13-35-224. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-132 by Sec. 32, Ch. 334, L. 1977; R.C.M. 1947, 23-47-132.

13-35-225. Election materials not to be anonymous. (1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(2) If a document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1).

History: En. 23-47-133 by Sec. 33, Ch. 334, L. 1977; R.C.M. 1947, 23-47-133; amd. Sec. 221, Ch. 571, L. 1979; amd. Sec. 1, Ch. 368, L. 1987; amd. Sec. 1, Ch. 23, L. 1991; amd. Sec. 1, Ch. 482, L. 1991.

Cross-References

Violation as misdemeanor, 13-35-103.

Liability in civil action for violation, 13-37-128.

13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying his employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises (express or implied) calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an employer to exhibit in a place where his workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that in case any particular ticket or political party, organization, or candidate is elected, work in his place or establishment will cease, in whole or in part, or will be continued or increased; his place or establishment will be closed; the salaries or wages of his workers or employees will be reduced or increased; or other threats or promises (express or implied) intended or calculated to influence the political opinions or actions of his workers or employees. This section shall apply to corporations, individuals, and public officers and employees.

(2) No person may attempt to coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(3) No public employee may solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at his place of employment.

However, nothing in this section is intended to restrict the right of a public employee to express his personal political views.

(4) Any person who violates the provisions of this section shall be fined not to exceed $1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense.

History: En. 23-47-134 by Sec. 34, Ch. 334, L. 1977; R.C.M. 1947, 23-47-134; amd. Sec. 222, Ch. 571, L. 1979; amd. Sec. 1, Ch. 655, L. 1983.

13-35-227. Prohibited contributions from corporations. (1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee which supports or opposes a candidate or a political party.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or a member of the corporation.

(4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

History: En. Sec. 25, Init. Act, Nov. 1912; re-en. Sec. 10790, R.C.M. 1921; re-en. Sec. 10790, R.C.M. 1935; Sec. 94-1444, R.C.M. 1947; redes. 23-4744 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 1, Ch. 296, L. 1975; R.C.M. 1947, 23-4744; amd. Sec. 1, Ch. 404, L. 1979.

Cross-References

Limitations on receipts from political committees, 13-37-218.

13-35-228. Prohibition of salary increase contribution. A corporation may not increase the salary of any officer or employee or give an emolument to any officer, employee, or other person with the intention that the increase in salary, the emolument, or any part thereof be contributed to support or oppose a candidate or ballot issue.

History: En. 23-47-135 by Sec. 35, Ch. 334, L. 1977; R.C.M. 1947, 23-47-135.

Cross-References

Violation as misdemeanor, 13-35-103.

Civil liability for violation, 13-37-128.

13-35-229. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-136 by Sec. 36, Ch. 334, L. 1977; R.C.M. 1947, 23-47-136.

13-35-230. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-137 by Sec. 37, Ch. 334, L. 1977; R.C.M. 1947, 23-47-137.

13-35-231. Unlawful for political party to endorse judicial candidate. A political party may not endorse, contribute to, or make an expenditure to support or oppose a judicial candidate.

History: En. 23-47-138 by Sec. 38, Ch. 334, L. 1977; R.C.M. 1947, 23-47-138; amd. Sec. 223, Ch. 571, L. 1979.

Cross-References

Election of Supreme Court Justices, 3-2-101, 3-2-102.

Election of District Court Judges, 3-5-201, 3-5-202.

Election of Justice of the Peace, 3-10-201.

Violation as misdemeanor, 13-35-103.

13-35-232. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-139 by Sec. 39, Ch. 334, L. 1977; R.C.M. 1947, 23-47-139.

13-35-233. Solicitation of votes on election day. (1) It is unlawful for a person or a political committee to place an advertisement supporting or opposing a candidate or a ballot issue for use on election day. Failure to remove billboards, yard signs, or posters on election day is not considered a violation.

(2) A person convicted of solicitation of votes on election day is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or be fined not to exceed $1,000, or both.

History: En. Sec. 1, Ch. 539, L. 1979.

13-35-234. Political criminal libel — misrepresenting voting records. (1) It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality or to knowingly misrepresent the voting record or position on public issues of any candidate. A person making such a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107.

History: En. Sec. 2, Ch. 539, L. 1979; amd. Sec. 1, Ch. 545, L. 1983.

Cross-References

When owner of radio station not held responsible for defamatory broadcast, 27-1-811.

Misdemeanor penalty, 46-18-212.

13-35-235. Incorrect election procedures information. (1) A person may not knowingly or purposely disseminate to any elector information about election procedures that is incorrect or misleading or gives the impression that the information has been officially disseminated by an election administrator.

(2) A person who violates this section is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 397, L. 1989.

Cross-References

Misdemeanor penalty, 46-18-212.

Part 3

Code of Fair Campaign Practices

13-35-301. Adoption of code of fair campaign practices. The following code of fair campaign practices is adopted by Montana:

"There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues before the country. Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and his party which merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or his personal or family life.

I will not use campaign material of any sort which misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations which aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, creed, or national origin.

I will not undertake or condone any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections or which hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone."

History: En. Sec. 1, Ch. 475, L. 1979.

13-35-302. Candidates to be given opportunity to subscribe to campaign practices code. (1) The commissioner of political practices shall prepare a form that sets forth the code of fair campaign practices provided for in 13-35-301 and a place for a candidate to sign the form and to indicate that the candidate endorses, subscribes to, and pledges to abide by the code.

(2) The commissioner shall send a copy of the form to each candidate required to file reports or other information with the commissioner. Signing the form is voluntary, and a failure or refusal to sign is not a violation of the election laws. A form must be sent for each election as soon as feasible. The signed form must be returned to the commissioner.

(3) Any candidate not required to file with the commissioner but wishing to subscribe to the code may obtain the form from the commissioner and may sign the form and deliver it to the commissioner.

History: En. Sec. 2, Ch. 475, L. 1979; amd. Sec. 1, Ch. 128, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 128 at beginning of (1), after "commissioner of", substituted "political" for "campaign"; in (2) substituted first sentence concerning sending forms for former language that read: "Each candidate required to file statements or reports with the commissioner shall be sent a copy of this form"; in (3) deleted former first sentence that read: "The commissioner shall supply the secretary of state, the county registrars, and the city and town clerks with forms" and near end, after "from the commissioner", deleted "the secretary of state, a county registrar, or a city or town clerk"; and made minor changes in style.

CHAPTER 36

CONTESTS

Part 1 — General Provisions

13-36-101. Grounds for contest of nomination or election to public office.
13-36-102. Time for commencing contest.

13-36-103. Court having jurisdiction of proceedings.
13-36-104. Nomination contests.

Part 2 — Procedure

13-36-201. Contents of contest petition.
13-36-202. Reception of illegal votes — allegations and evidence.
13-36-203. Form of complaint.
13-36-204. Bond required.
13-36-205. Recovery of costs.
13-36-206. Notice of filing — prompt hearing.
13-36-207. Hearing of contest.
13-36-208. Advancement of cases — dismissal — privileges of witnesses.
13-36-209. Forfeiture of nomination or office for violation of law — when inappropriate.
13-36-210. Punishment.
13-36-211. When nomination or election not to be vacated.
13-36-212. Declaration of result of election after rejection of illegal votes.

Chapter Cross-References

Salaries withheld during election contests, 2-16-202.

Role and duties of County Clerk and Recorder, 7-4-2611.

Challenges to local government bond elections, 7-7-105.

Definitions applicable to this chapter, 13-1-101.

Disposition of ballots and other election materials, 13-1-303.

Commissioner of Political Practices to investigate alleged violations of this chapter, 13-37-111.

Prosecution of violations of this chapter by Commissioner of Political Practices, 13-37-113.

Powers of County Attorney to investigate violations of this chapter, 13-37-125.

Part 1
General Provisions

13-36-101. Grounds for contest of nomination or election to public office. An elector may contest the right of any person to any nomination or election to public office for which the elector has the right to vote, for any of the following causes:

(1) on the ground of a deliberate, serious, and material violation of any provision of the law relating to nominations or elections;

(2) whenever the person whose right is contested was not, at the time of the election, eligible to such office;

(3) on account of illegal votes or an erroneous or fraudulent count or canvass of votes.

History: En. Sec. 45, Init. Act, Nov. 1912; re-en. Sec. 10810, R.C.M. 1921; re-en. Sec. 10810, R.C.M. 1935; Sec. 94-1464, R.C.M. 1947; redes. 23-4763 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 59, Ch. 365, L. 1977; R.C.M. 1947, 23-4763; amd. Sec. 224, Ch. 571, L. 1979.

Cross-References

Definition of "elector" and "public office", 13-1-101.

Ineligibility to hold office because of conviction, 13-35-106.

When nomination or election not to be vacated, 13-36-211.

13-36-102. Time for commencing contest. (1) Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination he intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(2) Any action to contest the right of a candidate to be declared elected to an office or to annul and set aside such election or to remove from or deprive any person of an office of which he is the incumbent for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after the day of election at which such offense was committed.

History: **(1)En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; Sec. 23-3316, R.C.M. 1947; (2)En. Sec. 40, Init. Act, Nov. 1912; re-en. Sec. 10805, R.C.M. 1921; re-en. Sec. 10805, R.C.M. 1935; Sec. 94-1459, R.C.M. 1947; redes. 23-4759 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 57, Ch. 365, L. 1977; Sec. 23-4759, R.C.M. 1947; R.C.M. 1947, 23-3316(1) thru (3), 23-4759; amd. Sec. 225, Ch. 571, L. 1979; amd. Sec. 58, Ch. 575, L. 1981.**

Cross-References

Certification of nomination, 13-15-406, 13-15-507.

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

13-36-103. Court having jurisdiction of proceedings. An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of his office for an offense mentioned in this title or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the district court of the county in which the certificate, declaration, or acceptance of his nomination as a candidate for the office to which he is declared nominated or elected is filed or in which the incumbent resides.

History: **En. Sec. 41, Init. Act, Nov. 1912; re-en. Sec. 10806, R.C.M. 1921; re-en. Sec. 10806, R.C.M. 1935; Sec. 94-1460, R.C.M. 1947; amd. and redes. 23-4760 by Sec. 25, Ch. 513, L. 1973; amd. Sec. 58, Ch. 365, L. 1977; R.C.M. 1947, 23-4760; amd. Sec. 226, Ch. 571, L. 1979.**

13-36-104. Nomination contests. In the case of nomination contests, the judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination.

History: **En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; R.C.M. 1947, 23-3316(4) thru (6).**

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Part 2
Procedure

13-36-201. Contents of contest petition. Any petition contesting the right of any person to a nomination or election shall set forth the name of every person whose election is contested and the grounds of the contest. The petition shall not thereafter be amended, except by leave of the court.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).

Cross-References

Grounds for contest, 13-36-101.

13-36-202. Reception of illegal votes — allegations and evidence. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that in one or more specified voting precincts illegal votes were given to the candidate whose nomination or election is contested which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other candidate for the same office. No testimony shall be received of any illegal votes unless the party contesting such election delivers to the opposite party, at least 3 days before such trial, a written list of the number of illegal votes (and by whom given) which he intends to prove on such trial. This provision shall not prevent the contestant from offering evidence of illegal votes not included in such statement if he did not know and by reasonable diligence was unable to learn of such additional illegal votes (and by whom they were given) before delivering such written list.

History: En. Sec. 47, Init. Act, Nov. 1912; re-en. Sec. 10812, R.C.M. 1921; re-en. Sec. 10812, R.C.M. 1935; Sec. 94-1466, R.C.M. 1947; redes. 23-4765 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4765; amd. Sec. 227, Ch. 571, L. 1979.

13-36-203. Form of complaint. (1) A petition or complaint filed under the provisions of this chapter shall be sufficient if it is substantially in the following form:

In the District Court of the
.... Judicial District,
for the County of ...., State of Montana.

A B (or A B and C D), Contestants,
vs.
E F, Contestee.

The petition of contestant (or contestants) above named alleges:

That an election was held (in the state, district, county, or city of ....), on the .... day of ...., A. D. 19.., for the (nomination of a candidate for) (or election of a) (state the office).

That .... and .... were candidates at said election, and the board of canvassers has returned the said .... as being duly nominated (or elected) at said election.

That contestant A B voted (or had a right to vote, as the case may be) at said election (or claims to have had a right to be returned as the nominee or officer elected or nominated at said election, or was a candidate at said election, as the case may be), and said contestant C D (here state in like manner the right of each contestant).

And said contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

Wherefore, your contestants pray that it may be determined by the court that said .... was not duly nominated (or elected), and that said election was void or that said A B or C D, as the case may be, was duly nominated (or elected), and for such other and further relief as to the court may seem just and legal in the premises.

(2) Said complaint shall be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases.

History: En. Sec. 53, Init. Act, Nov. 1912; re-en. Sec. 10818, R.C.M. 1921; re-en. Sec. 10818, R.C.M. 1935; Sec. 94-1472, R.C.M. 1947; redes. 23-4771 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4771.

Cross-References

Verification of pleadings, 25-4-203.

13-36-204. Bond required. Before any proceeding on the petition, the petitioner shall give bond to the state in such sum as the court may order, not exceeding $2,000, with not less than two sureties, who shall justify in the manner required of sureties on bail bonds, conditioned to pay all costs, disbursements, and attorney's fees that may be awarded against him if he shall not prevail.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).

13-36-205. Recovery of costs. In any contest, the prevailing party may recover his costs, disbursements, and reasonable attorney's fees. Costs, disbursements, and attorney's fees in all such cases shall be in the discretion of the court. In case judgment is rendered against the petitioner, it shall also be rendered against the sureties on the bond.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 228, Ch. 571, L. 1979.

Cross-References

Costs, Title 25, ch. 10.

13-36-206. Notice of filing — prompt hearing. On the filing of any such petition, the clerk shall immediately notify the judge of the court and issue a citation to the person whose nomination or office is contested, citing him to appear and answer not less than 3 or more than 7 days after the date of filing the petition. The court shall hear said cause, and every such contest shall take precedence over all other business on the court docket and shall be tried and disposed of with all convenient dispatch. The court shall always be deemed in session for the trial of such cases.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).

13-36-207. Hearing of contest. The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to the proceedings on such petition and no person other than the parties and their attorneys may be heard thereon except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may in its discretion order the cases to be heard together and may apportion the costs, disbursements, and attorney's fees between them and shall finally determine all questions of law and fact, except that the judge may in his discretion impanel a jury to decide on questions of fact. In the case of nominations or elections other than for federal congressional offices, the court shall immediately certify its decision to the governing body or official issuing certificates of nomination or election and the governing body or official shall thereupon issue certificates of nomination or election to the person or persons entitled thereto by the court's decision. If judgment of ouster against a defendant is rendered, the nomination or office shall be by the judgment declared vacant, except as provided in 13-36-212, and shall thereupon be filled by a new election or by appointment as may be provided by law regarding vacancies in such nomination or office.

History: **En. Sec. 49, Init. Act, Nov. 1912; re-en. Sec. 10814, R.C.M. 1921; re-en. Sec. 10814, R.C.M. 1935; Sec. 94-1468, R.C.M. 1947; redes. 23-4767 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 60, Ch. 365, L. 1977; R.C.M. 1947, 23-4767; amd. Sec. 229, Ch. 571, L. 1979.**

Cross-References

Vacancies in state offices, Title 2, ch. 16, part 5.

Vacancies in local government offices, 7-4-2206.

Vacancy after primary and prior to general election, 13-10-327.

13-36-208. Advancement of cases — dismissal — privileges of witnesses. Proceedings under this title shall be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue the trial if necessary, and in case of such continuance or postponement, the court may impose costs in its discretion as a condition thereof. No petition may be dismissed without the consent of the county attorney unless the same is dismissed by the court. No person may be excused from testifying or producing papers or documents on the ground that his testimony or the production of papers or documents will tend to criminate him; but no admission, evidence, or paper made or advanced or produced by such person or any evidence that is the direct result of such evidence or information that he may have so given may be offered or used against him in any civil or criminal prosecution, except in a prosecution for perjury committed in such testimony.

History: **En. Sec. 52, Init. Act, Nov. 1912; re-en. Sec. 10817, R.C.M. 1921; re-en. Sec. 10817, R.C.M. 1935; Sec. 94-1471, R.C.M. 1947; redes. 23-4770 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 61, Ch. 365, L. 1977; R.C.M. 1947, 23-4770.**

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

13-36-209. Forfeiture of nomination or office for violation of law — when inappropriate. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared nominated or elected to any office or to annul or set aside such nomination or election or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate or with his knowledge or consent or was committed without his sanction or connivance and that all reasonable means for preventing the commission of such offense at such election were taken by and on behalf of the candidate; that the offense or offenses complained of were trivial, unimportant, and limited in character and that in all other respects his participation in the election was free from such offenses or illegal acts; or that any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith; and under the circumstances it seems to the court to be unjust that the candidate forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of the candidate is not by reason of such offense or omission complained of void, nor may the candidate be removed from or deprived of his office.

History: En. Sec. 38, Init. Act, Nov. 1912; re-en. Sec. 10803, R.C.M. 1921; re-en. Sec. 10803, R.C.M. 1935; Sec. 94-1457, R.C.M. 1947; redes. 23-4757 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 55, Ch. 365, L. 1977; R.C.M. 1947, 23-4757.

13-36-210. Punishment. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared to be nominated to an office or elected to an office or to annul and set aside such election or to remove any person from his office, it appears that such person was guilty of any corrupt practice, illegal act, or undue influence in or about such nomination or election, he shall be punished by being deprived of the nomination or office, as the case may be, and the vacancy therein shall be filled in the manner provided by law. The only exceptions to this judgment shall be those provided in 13-36-209. Such judgment does not prevent the candidate or officer from being proceeded against by indictment or criminal information for any such act or acts.

History: En. Sec. 39, Init. Act, Nov. 1912; re-en. Sec. 10804, R.C.M. 1921; re-en. Sec. 10804, R.C.M. 1935; Sec. 94-1458, R.C.M. 1947; redes. 23-4758 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 365, L. 1977; R.C.M. 1947, 23-4758.

Cross-References

Vacancies in state offices, Title 2, ch. 16, part 5.

Vacancies in local government offices, 7-4-2206.

Vacancy after primary and prior to general election, 13-10-327.

13-36-211. When nomination or election not to be vacated. Nothing in the ground of contest specified in 13-36-101(3) is to be so construed as to authorize a nomination or election to be set aside on account of illegal votes, unless it appear either:

(1) that the candidate or nominee whose right is contested had knowledge of or connived at such illegal votes; or

(2) that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same nomination or office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

History: En. Sec. 46, Init. Act, Nov. 1912; re-en. Sec. 10811, R.C.M. 1921; re-en. Sec. 10811, R.C.M. 1935; Sec. 94-1465, R.C.M. 1947; redes. 23-4764 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4764.

13-36-212. Declaration of result of election after rejection of illegal votes. If, in any case of a contest on the ground of illegal votes, it appears that a person other than the one returned has the highest number of legal votes after the illegal votes have been eliminated, the court must declare such person nominated or elected, as the case may be.

History: En. Sec. 44, Init. Act, Nov. 1912; re-en. Sec. 10809, R.C.M. 1921; re-en. Sec. 10809, R.C.M. 1935; Sec. 94-1463, R.C.M. 1947; redes. 23-4762 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4762.

CHAPTER 37

CONTROL OF CAMPAIGN PRACTICES

Part 1 — Commissioner of Political Practices

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(Repealed. Sec. 8, Ch. 581, L. 1993)

Chapter Cross-References

Elected official's business disclosure statement, 5-7-213.

Role and duties of County Clerk and Recorder, 7-4-2611.

Definitions applicable to this chapter, 13-1-101.

Political contributions of insurers prohibited, 33-18-305.

Limitation on political activities of employee of Department of Fish, Wildlife, and Parks, 87-1-204.

Part 1
Commissioner of Political Practices

13-37-101. Commissioner of political practices. In this chapter, "commissioner" means the commissioner of political practices created by 13-37-102, unless the context clearly indicates otherwise.

History: En. 23-4796 by Sec. 3, Ch. 365, L. 1977; R.C.M. 1947, 23-4796; amd. Sec. 19, I.M. No. 85, approved Nov. 4, 1980.

13-37-102. Creation of office. (1) There is a commissioner of political practices who is appointed by the governor, subject to confirmation by a majority of the senate. A four-member selection committee comprised of the speaker of the house, the president of the senate, and the minority floor leaders of both houses of the legislature shall submit to the governor a list of not less than two or more than five names of individuals for his consideration. A majority of the members of the selection committee shall agree upon each nomination.

(2) The individual selected to serve as commissioner of political practices may be removed by the governor prior to the expiration of the term only for incompetence, malfeasance, or neglect of duty. The sufficiency of such causes shall be subject to judicial review.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(1), (5); amd. Sec. 1, Ch. 483, L. 1979; amd. Sec. 19, I.M. No. 85, approved Nov. 4, 1980.

Cross-References

Office of Commissioner attached to office of Secretary of State for administrative purposes, 2-15-411.

13-37-103. Term of office — limitations on holding other office. (1) The individual selected to serve as the commissioner of political practices is appointed for a 6-year term, but he is thereafter ineligible to serve as the commissioner of political practices.

(2) The individual selected to serve as commissioner of political practices is precluded from being a candidate for public office as defined in 13-1-101 for a period of 5 years from the time that he leaves office as commissioner.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(2); amd. Sec. 2, Ch. 483, L. 1979.

13-37-104. Vacancy. (1) If for any reason a vacancy occurs in the position of commissioner, a successor shall be appointed within 30 days as provided in 13-37-102(1) to serve out the unexpired term. Every nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session.

(2) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served 3 years or more of an unexpired term is not eligible for reappointment.

(3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served less than 3 years may be reappointed for a 6-year term as provided in 13-37-102(1).

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(3); amd. Sec. 4, Ch. 483, L. 1979.

13-37-105. Impeachment and prosecution of commissioner. The commissioner may be removed from office by impeachment as provided in Title 5, chapter 5, part 4. He may also be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(4).

13-37-106. Salary. The commissioner of political practices is entitled to receive a salary of $30,303 in fiscal year 1992 and $31,551 in fiscal year 1993 and thereafter.

History: En. Sec. 3, Ch. 483, L. 1979; amd. Sec. 4, Ch. 605, L. 1981; amd. Sec. 3, Ch. 656, L. 1983; amd. Sec. 1, Ch. 236, L. 1985; amd. Sec. 4, Ch. 693, L. 1985; amd. Sec. 12, Ch. 660, L. 1989; amd. Sec. 14, Ch. 720, L. 1991.

13-37-107 through 13-37-110 reserved.

13-37-111. Investigative powers and duties. (1) The commissioner of political practices shall be responsible for investigating all of the alleged violations of the election laws contained in chapters 35, 36, or 37 of this title and shall in conjunction with the county attorneys be responsible for enforcing these election laws.

(2) The commissioner may investigate all statements filed pursuant to the provisions of chapters 35, 36, or 37 of this title and shall also investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapters 35, 36, or 37 of this title. Upon the submission of a written complaint by any individual, the commissioner shall also investigate any other alleged violation of the provisions of chapters 35, 36, or 37 of this title or any rule adopted pursuant thereto.

(3) The commissioner may inspect any records, accounts, or books that must be kept pursuant to the provisions of chapters 35, 36, or 37 of this title which are held by any political committee or candidate, so long as such inspection is made during reasonable office hours.

(4) The commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or

material for the purpose of conducting any investigation pursuant to the provisions of chapters 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(1), (13), (17), (21); amd. Sec. 230, Ch. 571, L. 1979.

13-37-112. Personnel and budget. (1) The commissioner shall select an appropriate staff to enforce the provisions of chapters 35, 36, or 37 of this title, and he may hire and fire all personnel under his supervision.

(2) The commissioner shall be responsible for preparing, administering, and allocating the budget for his office.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(2), (16); amd. Sec. 231, Ch. 571, L. 1979.

Cross-References

Office of Commissioner attached to office of Secretary of State for administrative purposes, 2-15-411.

Role of Commissioner of Political Practices in regulation of lobbying, Title 5, ch. 7.

13-37-113. Hiring of attorneys — prosecutions. The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of chapters 35, 36, or 37 of this title. Any properly licensed attorney so retained or hired shall exercise the powers of a special attorney general, and he may prosecute, subject to the control and supervision of the commissioner and the provisions of 13-37-124 and 13-37-125, any criminal or civil action arising out of a violation of any provision of chapters 35, 36, or 37 of this title. All prosecutions shall be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of chapters 35, 36, or 37 of this title;

(2) attend and give advice to a grand jury when cases involving criminal violations of chapters 35, 36, or 37 of this title are presented;

(3) draw and file indictments, informations, and criminal complaints;

(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or county from persons convicted of violating chapters 35, 36, or 37 of this title; and

(5) do any other act necessary to successfully prosecute a violation of any provision of chapters 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(3); amd. Sec. 232, Ch. 571, L. 1979.

Cross-References

Consultation with County Attorney, 13-37-124.

Powers of County Attorney to investigate, 13-37-125.

13-37-114. Rules. The commissioner shall promulgate and publish rules to carry out the provisions of chapters 35, 36, or 37 of this title and shall promulgate such rules in conformance with the Montana Administrative Procedure Act.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(14); amd. Sec. 233, Ch. 571, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

13-37-115. Orders of noncompliance. The commissioner may issue orders of noncompliance as prescribed by 13-37-121.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(18).

13-37-116. Exercise of powers. The commissioner may exercise all of the powers conferred upon him by law in any jurisdiction or political subdivision of the state.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(19).

13-37-117. Commissioner to provide forms, manuals, and election laws. (1) The commissioner shall prescribe forms for reports and other information required to be filed pursuant to chapter 35, 36, or 37 of this title and furnish forms and appropriate information to persons required to file reports and other information.

(2) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file reports pursuant to chapter 35, 36, or 37 of this title.

(3) The commissioner shall, at the expense of the state, furnish copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections to candidates and to any other persons required to file reports or other information pursuant to chapter 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(4), (5), (7); amd. Sec. 234, Ch. 571, L. 1979; amd. Sec. 2, Ch. 113, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 113 in (1), in two places, and in (2) substituted "reports" for "statements"; in (3), near beginning after "commissioner shall", substituted "at the expense of the state, furnish copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections to candidates and to any other persons required to file reports or other information pursuant to chapter 35, 36, or 37 of this title" for "prescribe the manner in which the county clerk and recorders shall receive, file, collate, and maintain reports filed with them under chapters 35, 36, or 37 of this title"; and made minor changes in style.

13-37-118. Information voluntarily supplied. The commissioner shall accept and file any information voluntarily supplied that exceeds the requirements of chapters 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(6); amd. Sec. 235, Ch. 571, L. 1979.

13-37-119. Availability of information. (1) The commissioner shall make statements and other information filed with his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost.

(2) The commissioner shall preserve statements and other information filed with his office for a period of 10 years from date of receipt.

(3) The commissioner shall prepare and publish summaries of the statements received and such other reports as he considers appropriate.

(4) The commissioner shall provide for wide public dissemination of summaries and reports.

History: (1) thru (4)En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; Sec. 23-4786, R.C.M. 1947; (Former (5))En. 23-4789 by Sec. 14, Ch. 480, L. 1975; Sec. 23-4789, R.C.M. 1947; R.C.M. 1947, 23-4786(8) through (12), 23-4789; amd. Sec. 236, Ch. 571, L. 1979.

13-37-120. Reports. The commissioner may report as necessary on the matters within the commissioner's jurisdiction that the legislature may prescribe and shall also make recommendations for further legislation that may appear desirable.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(15), (20); amd. Sec. 237, Ch. 571, L. 1979; amd. Sec. 17, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 deleted former first sentence that read: "The commissioner shall at the close of each fiscal year report to the legislature and the governor concerning the action he has taken, including the names, salaries, and duties of all individuals in his employ and the money he has disbursed" and at beginning, after "commissioner", substituted "may report as necessary" for "shall also make further reports"; and made minor changes in style.

13-37-121. Inspection of statements and reports — issuance of orders of noncompliance. (1) Each statement and report filed with the commissioner during an election or within 60 days thereafter shall be inspected within 10 days after it is filed. If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance. Such an order of noncompliance shall be issued when:

(a) upon examination of the official ballot, it appears that the person has failed to file a statement or report as required by this chapter or that a statement or report filed by a person does not conform to law; or

(b) it is determined that a statement or report filed with the commissioner does not conform to the requirements of this chapter or that a person has failed to file a statement or report required by law.

(2) If an order of noncompliance is issued during a campaign period or within 60 days after an election, a candidate or political committee shall submit the necessary information within 5 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

(3) If an order of noncompliance is issued during any period other than that described in subsection (2), a candidate or political committee shall submit the necessary information within 10 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

History: En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(1) thru (3); amd. Sec. 238, Ch. 571, L. 1979.

Cross-References

Authority to issue order of noncompliance, 13-37-115.

13-37-122. Judicial review of orders of noncompliance. A candidate or political treasurer aggrieved by the issuance of an order of noncompliance may seek judicial review in the district court of the county in which the candidate resides or the county in which the political committee has its headquarters. All petitions for judicial review filed pursuant to this section shall be expeditiously reviewed by the appropriate district court.

History: En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(4).

13-37-123. Examination of reports after election. Within 120 days after the date of each election, the commissioner shall examine and compare each statement or report filed with the commissioner pursuant to the provisions of this chapter to determine whether the statement or report conforms to the provisions of the law. The examination shall include a comparison of all reports and statements received by the commissioner pursuant to the requirements of this chapter. The commissioner may investigate the source and authenticity of any contribution or expenditure listed in any report or statement filed pursuant to this chapter or the alleged failure to report any contribution or expenditure required to be reported pursuant to this chapter.

History: En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(5); amd. Sec. 239, Ch. 571, L. 1979.

13-37-124. Consultation and cooperation with county attorney. (1) Whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapters 35, 36, or 37 of this title, he shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after he receives notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive his right to prosecute and thereby authorize the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of chapters 35, 36, or 37 of this title.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution shall be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner, except those paid to or imposed by a justice's court, shall be deposited in the state general fund.

History: En. 23-4788 by Sec. 13, Ch. 480, L. 1975; amd. Sec. 46, Ch. 334, L. 1977; amd. Sec. 65, Ch. 365, L. 1977; R.C.M. 1947, 23-4788(1) thru (4); amd. Sec. 240, Ch. 571, L. 1979; amd. Sec. 7, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

13-37-125. Powers of county attorney to investigate. (1) Nothing in chapters 35, 36, or 37 of this title prevents a county attorney from inspecting any records, accounts, or books which must be kept pursuant to the provisions of chapters 35, 36, or 37 of this title that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable office hours.

(2) A county attorney may:

(a) administer oaths and affirmations;

(b) subpoena witnesses and compel their attendance;

(c) take evidence; and

(d) require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapters 35, 36, or 37 of this title.

History: En. 23-4788 by Sec. 13, Ch. 480, L. 1975; amd. Sec. 46, Ch. 334, L. 1977; amd. Sec. 65, Ch. 365, L. 1977; R.C.M. 1947, 23-4788(5), (6); amd. Sec. 241, Ch. 571, L. 1979.

13-37-126. Names not to be printed on ballot. (1) The name of a candidate may not be printed on the official ballot for an election if the candidate or a political treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner must, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should not be printed on the official ballot.

History: En. 23-4791 by Sec. 16, Ch. 480, L. 1975; R.C.M. 1947, 23-4791; amd. Sec. 242, Ch. 571, L. 1979.

Cross-References

Vacancy prior to primary election, 13-10-326.

Vacancy after primary and prior to general election, 13-10-327.

13-37-127. Withholding of certificates of nomination or election. (1) A certificate of election shall not be granted to any candidate until he or his political treasurer has filed the reports and statements that must be filed pursuant to the provisions of this chapter. No candidate for an elective office may assume the powers and duties of that office until he has received a certificate of election as provided by law. A certificate of election shall only be issued by the public official responsible for issuing a certificate or commission of election.

(2) In carrying out the mandate of this section, the commissioner must, by written statement, notify the public official responsible for issuing a certificate of nomination or election that a candidate or his treasurer has complied with the provisions of this chapter as described in subsection (1) and that a certificate of nomination or election may be issued.

History: En. 23-4792 by Sec. 17, Ch. 480, L. 1975; R.C.M. 1947, 23-4792; amd. Sec. 243, Ch. 571, L. 1979.

Cross-References

Certificates issued by Election Administrator, 13-15-406.

Governor to issue commissions, 13-15-504.

13-37-128. Cause of action created. (1) Except as provided in 13-37-306, any person who intentionally or negligently violates any of the reporting provisions of this chapter, shall be liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) Any person who makes or receives a contribution or expenditure in violation of 13-35-225, 13-35-227, 13-35-228, or this chapter, is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contribution or expenditure, whichever is greater.

History: En. Sec. 244, Ch. 571, L. 1979.

13-37-129. Liability and disposition of fines. In determining the amount of liability under 13-37-128, the court may take into account the seriousness of a violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action brought by a county attorney in a court other than a justice's court, the county shall receive 50% of the amount recovered. The remaining 50% shall be deposited in the general fund of the state. In an action brought by the commissioner in a court other than a justice's court, the entire amount recovered shall be paid to the general fund of the state.

History: En. Sec. 245, Ch. 571, L. 1979; amd. Sec. 8, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

13-37-130. Limitation of action. No action may be brought under 13-37-128 and 13-37-129 more than 4 years after the occurrence of the facts which give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and 13-37-129 shall be the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter, except as provided in 13-37-306. These provisions are not subject to the misdemeanor penalties of 13-35-103 but may be a ground for contest of election or removal from office as provided in 13-35-106(3) and Title 13, chapter 36.

History: En. Sec. 246, Ch. 571, L. 1979.

Part 2
Campaign Finance

Part Cross-References

Civil penalties for violation of chapter, 13-37-128.

13-37-201. Campaign treasurer. Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. A political committee shall file the certification, which shall include an organizational statement and set forth the name and address of all other officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. The certification of a candidate or political committee shall be filed with the commissioner and the appropriate election administrator as specified for the filing of reports in 13-37-225.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(1); amd. Sec. 247, Ch. 571, L. 1979; amd. Sec. 23, Ch. 591, L. 1991.

Cross-References

Naming and labeling of political committees, 13-37-210.

13-37-202. Deputy campaign treasurers. (1) A campaign treasurer may appoint deputy campaign treasurers, but not more than one in each county in which the campaign is conducted. Each candidate and political committee shall certify the full name and complete address of the campaign treasurer and all deputy campaign treasurers with the office with whom the candidate or the political committee is required to file reports.

(2) Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized in writing to do so by the campaign treasurer and the candidate, in the case of a candidate, or the campaign treasurer and the chairman of the political committee, in the case of a political committee. The written authorization shall be maintained as a part of the records required to be kept by the treasurer, as specified in 13-37-208.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(2), (4); amd. Sec. 248, Ch. 571, L. 1979.

Cross-References

Definition of "candidate" and "political committee", 13-1-101.

13-37-203. Qualifications of campaign and deputy campaign treasurers. Any campaign or deputy campaign treasurer appointed pursuant to 13-37-201 and 13-37-202 shall be a registered voter in this state. An individual may be appointed and serve as a campaign treasurer of a candidate and a political committee or two or more candidates and political committees. A candidate may appoint himself as his own campaign or deputy campaign treasurer. No individual may serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until he has been designated and his name certified by the candidate or political committee.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(3).

Cross-References

Registered voter, Title 13, ch. 2.

13-37-204. Removal of campaign and deputy campaign treasurers. A candidate or political committee may remove his or its campaign or deputy campaign treasurer. The removal of any treasurer or deputy treasurer shall immediately be reported to the officer with whom the name of the campaign treasurer was originally filed. In case of death, resignation, or removal of his or its campaign treasurer before compliance with any obligation of a campaign treasurer under this chapter, the candidate or political committee shall appoint a successor and certify the name and address of the successor as specified in 13-37-201.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(5).

13-37-205. Campaign depositories. Except as provided in 13-37-206, each candidate and each political committee shall designate one primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in and expenditures from secondary depositories when authorized to do so as provided in 13-37-202(2). Only a bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time and with the same officer with whom the candidate or committee files the name of his or its campaign treasurer pursuant to 13-37-201. Nothing in this section shall prevent a political committee or candidate from having more than one campaign account in the same depository, but a candidate may not utilize his regular or personal account in the depository as a campaign account.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(6); amd. Sec. 249, Ch. 571, L. 1979; amd. Sec. 1, Ch. 98, L. 1981.

13-37-206. Exception for certain school districts and certain special districts. (1) The provisions of this part, except 13-37-217, do not apply to candidates for the office of trustee of a school district, their political committees, and political committees organized to support or oppose a school district issue when the school district is:

(a) a first-class district located in a county having a population of less than 15,000;

(b) a second- or third-class district; or

(c) a county high school district having a student enrollment of less than 2,000.

(2) The provisions of this part, except 13-37-217, do not apply to candidates for certain special district offices, their political committees, and political committees organized to support or oppose a special district issue when the special district is a conservation district, a fire district, a hospital district, an irrigation district, a sewer district, a transportation district, or a water district.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(7); amd. Sec. 250, Ch. 571, L. 1979; amd. Sec. 1, Ch. 361, L. 1991.

13-37-207. Deposit of contributions — statement of campaign treasurer. (1) All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate or political committee shall be deposited prior to the end of the fifth business day following their receipt (Sundays and holidays excluded) in a checking account, share draft account, share checking account, or negotiable order of withdrawal account in a campaign depository designated pursuant to 13-37-205.

(2) A statement showing the amount received from or provided by each person and the account in which the funds are deposited shall be prepared by the campaign treasurer at the time the deposit is made. This statement along with the receipt form for cash contributions deposited at the same time and a deposit slip for the deposit shall be kept by the treasurer as a part of his records.

History: En. 23-4782 by Sec. 7, Ch. 480, L. 1975; R.C.M. 1947, 23-4782; amd. Sec. 2, Ch. 98, L. 1981.

13-37-208. Treasurer to keep records. (1) The campaign treasurer of each candidate and each political committee shall keep detailed accounts (current within not more than 10 days after the date of receiving a contribution or making an expenditure, except that accounts shall be current as of the 5th day before the date of filing of a report as specified in 13-37-226) of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a report filed under this chapter.

(2) Accounts of a deputy campaign treasurer shall be transferred to the treasurer of a candidate or political committee before the candidate or political committee finally closes its books or when the position of a deputy campaign treasurer becomes vacant and no successor is appointed.

(3) Accounts kept by a campaign treasurer of a candidate or political committee shall be preserved by the campaign treasurer for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.

History: En. 23-4783 by Sec. 8, Ch. 480, L. 1975; R.C.M. 1947, 23-4783(1), (3); amd. Sec 251, Ch. 571, L. 1979.

13-37-209. Inspection of records. Accounts kept by the campaign treasurer of a candidate or political committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by the campaign treasurer of any opposing candidate or political committee in the same electoral district. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction. The campaign treasurers of political committees supporting a candidate may be joined with the campaign treasurer of the candidate as respondents in such a proceeding.

History: En. 23-4783 by Sec. 8, Ch. 480, L. 1975; R.C.M. 1947, 23-4783(2).

13-37-210. Naming and labeling of political committees. (1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:

(a) name and identify itself in its organizational statement using a name or phrase:

(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and

(ii) if a majority of its contributors share a common employer, that identifies the employer; and

(b) label any media advertisement or other paid public statement it makes or causes to be made in support of or opposition to any candidate or ballot measure by printing or broadcasting its name, as provided under subsection (1)(a), and position in support of or opposition to the candidate or ballot measure as a part of the media advertisement or other paid public statement.

(2) The naming and labeling requirements in subsection (1) are reporting requirements for purposes of enforcement under 13-37-128.

History: En. Sec. 1, Ch. 225, L. 1985.

13-37-211 through 13-37-214 reserved.

13-37-215. Petty cash funds allowed. (1) The campaign treasurer for each candidate or political committee is authorized to withdraw the following amount each week from the primary depository for the purpose of providing a petty cash fund for the candidate or political committee:

(a) for all statewide candidates and political committees filing reports pursuant to 13-37-226(1), $100 per week; and

(b) for all other candidates and political committees, $25 per week.

(2) The petty cash fund may be spent for office supplies, transportation expenses, postage stamps, and other necessities in an amount of less than $25. Petty cash shall not be used for the purchase of time, space, or services from any communications medium.

History: En. 23-4784 by Sec. 9, Ch. 480, L. 1975; R.C.M. 1947, 23-4784; amd. Sec. 252, Ch. 571, L. 1979; amd. Sec. 1, Ch. 21, L. 1987.

13-37-216. Limitations on contributions. (1) Aggregate contributions for all elections in a campaign by an individual, other than the candidate, to a candidate and political committees organized on his behalf are limited as follows:

(a) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed $1,500;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $750;

(c) for a candidate for public service commissioner, district court judge, or state senator, not to exceed $400; and

(d) for a candidate for any other public office, not to exceed $250.

(2) For the purposes of this subsection, an independent committee means a committee which is not specifically organized on behalf of a particular candidate or which is not controlled either directly or indirectly by a candidate or candidate's committee and which does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions. For the purpose of limitation on contributions, political party organizations are independent committees. Aggregate contributions by an independent committee to a candidate and political committees organized on his behalf for all elections in a campaign are limited as follows:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed $8,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $2,000;

(c) for a candidate for public service commissioner, not to exceed $1,000;

(d) for a candidate for the state senate, not to exceed $600;

(e) for a candidate for any other public office, not to exceed $300.

(3) The limitations imposed by this section do not apply to public funds contributed to a candidate under part 3 of this chapter.

History: En. 23-4795 by Sec. 1, Ch. 481, L. 1975; amd. Sec. 67, Ch. 365, L. 1977; R.C.M. 1947, 23-4795; amd. Sec. 253, Ch. 571, L. 1979.

Cross-References

Definition of "contribution", 13-1-101.

Corporations prohibited from making contributions, 13-35-227.

Limitations on receipts from political committees, 13-37-218.

13-37-217. Contributions in name of undisclosed principal. No person may make a contribution of his own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies such money. No person may knowingly receive such a contribution or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished.

History: En. Sec. 18, Init. Act, Nov. 1912; re-en. Sec. 10783, R.C.M. 1921; re-en. Sec. 10783, R.C.M. 1935; Sec. 94-1437, R.C.M. 1947; redes. 23-4737 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 54, Ch. 365, L. 1977; R.C.M. 1947, 23-4737; amd. Sec. 254, Ch. 571, L. 1979.

Cross-References

Corporations prohibited from making contributions, 13-35-227.

13-37-218. Limitations on receipts from political committees. (1) A candidate for the state senate may receive no more than $1,000 in total combined monetary contributions from all political committees contributing to the campaign, and a candidate for the state house of representatives may receive no more than $600 in total combined monetary contributions from all political committees contributing to the campaign. The foregoing limitations must be multiplied by the inflation factor as defined in subsection (2) for the year in which general elections are held, and the resulting figure must be rounded off to the nearest $50 increment. The commissioner of political practices shall publish the revised limitations as a rule. In-kind contributions may not be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

(2) "Inflation factor" means a number determined for each year by dividing the consumer price index for June of the year by the consumer price index for June 1980. The consumer price index to be used in determining the inflation factor is the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

History: En. Sec. 1, Ch. 529, L. 1983; amd. Sec. 19, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 in second sentence of (1), after "defined in", substituted "subsection (2)" for "15-30-101(8)" and after "held" deleted "after 1984"; inserted (2) defining inflation factor; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Cross-References

Definition of "contributions", 13-1-101.

Limitations on contributions, 13-27-216.

Corporations prohibited from making contributions, 13-35-227.

13-37-219 through 13-37-224 reserved.

13-37-225. Reports of contributions and expenditures required. (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this chapter shall be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports shall be filed with the election administrator of the county in which the election is to be held or, if the election is to be held in more than one county, with the election administrator in the county that the commissioner specifies.

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(1), (2); amd. Sec. 255, Ch. 571, L. 1979; amd. Sec. 24, Ch. 591, L. 1991.

Cross-References

Rules of conduct for public officers, legislators, and employees, 2-2-104.

Elected officials — financial disclosure statements, 5-7-213.

Definition of "contribution" and "expenditure", 13-1-101.

13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days preceding the date on which an election is held and within 24 hours after receiving a contribution of $500 or more if received between the 10th day before and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that an issue subject to a referendum is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held and within 24 hours after receiving a contribution of $100 or more if received between the 17th day before and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a closing report at the close of each calendar year, on a date to be prescribed by the commissioner.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-225(2) and this section.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(3) thru (6); amd. Sec. 256, Ch. 571, L. 1979; amd. Sec. 2, Ch. 339, L. 1989; amd. Sec. 1, Ch. 75, L. 1991; amd. Sec. 20, Ch. 10, L. 1993; amd. Sec. 1, Ch. 208, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 10 in (7) deleted superfluous internal reference; and made minor changes in style.

Chapter 208 in (3)(a) and (5)(a) substituted "12th day" for "10th day"; in (3)(a) substituted "17th day" for "15th day"; and made minor changes in style.

One style change in (4) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Cross-References

Times for holding general elections, 13-1-104.

Times for holding primary elections, 13-1-107.

13-37-227. Comprehensive report when several candidates or issues involved. The commissioner shall adopt rules that will permit political committees, including political parties, to file copies of a single comprehensive report when they support or oppose more than one candidate or issue. The commissioner shall adopt rules under which committees filing periodic reports with the federal election commission and committees headquartered outside the state of Montana shall report in accordance with this title.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(7); amd. Sec. 257, Ch. 571, L. 1979.

13-37-228. Time periods covered by reports. Reports filed under 13-37-225 and 13-37-226 shall be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report shall cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee as defined in 13-1-101 until the fifth day before the date of filing of the appropriate initial report pursuant to subsections (1) through (5) of 13-37-226.

(2) Subsequent periodic reports shall cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (5).

(3) Closing reports shall cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which he or it participates whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign, unless the election is a primary election and the candidate or political committee will participate in the general election.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(8); amd. Sec. 258, Ch. 571, L. 1979; amd. Sec. 2, Ch. 75, L. 1991.

13-37-229. Disclosure of contributions received. Each report required by this chapter shall disclose the following information:

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of $35 or more to a candidate or political committee (including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events);

(3) for each person identified under subsection (2), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting periods;

(4) the total sum of individual contributions made to or for a political committee or candidate and not reported under subsections (2) and (3) of this section;

(5) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

(6) each loan from any person during the reporting period, together with the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

(7) the amount and nature of debts and obligations owed to a political committee or candidate, in the form prescribed by the commissioner;

(8) an itemized account of proceeds that total less than $35 from a person from mass collections made at fundraising events;

(9) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through (8) of this section during the reporting period;

(10) the total sum of all receipts received by or for the committee or candidate during the reporting period; and

(11) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues.

History: En. 23-4779 by Sec. 4, Ch. 480, L. 1975; R.C.M. 1947, 23-4779(1) through (9), (part (16)); amd. Sec. 1, Ch. 36, L. 1987; amd. Sec. 3, Ch. 75, L. 1991.

13-37-230. Disclosure of expenditures made. Each report required by this chapter shall disclose the following information, except that a candidate shall only be required to report the information specified in this section if the transactions involved were undertaken for the purpose of influencing an election:

(1) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(2) the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

(3) the total sum of expenditures made by a political committee or candidate during the reporting period;

(4) the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;

(5) the name of any person to whom a loan was made during the reporting period, including the full name and mailing address (occupation and principal place of business, if any) of that person, and the full name and mailing address

(occupation and principal place of business, if any) of the endorsers, if any, and the date and amount of each loan;

(6) the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner;

(7) other information that may be required by the commissioner to fully disclose the disposition of funds used to support or oppose candidates or issues.

History: En. 23-4779 by Sec. 4, Ch. 480, L. 1975; R.C.M. 1947, 23-4779(10) through (16).

13-37-231. Reports to be certified as true and correct. (1) A report required by this chapter to be filed by a candidate or political committee shall be verified as true and correct by the oath or affirmation of the individual filing the report. The individual filing the report shall be the candidate or an officer of a political committee who is on file as an officer of the committee with the commissioner.

(2) A copy of a report or statement filed by a candidate or political committee shall be preserved by the individual filing it for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.

History: En. 23-4780 by Sec. 5, Ch. 480, L. 1975; R.C.M. 1947, 23-4780; amd. Sec. 260, Ch. 571, L. 1979.

Cross-References

Oaths and affirmations, Title 1, ch. 6.

Part 3

Public Campaign Finance (Repealed. Sec. 8, Ch. 581, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

13-37-301. En. 23-4901 by Sec. 1, Ch. 263, L. 1974; amd. Sec. 1, Ch. 538, L. 1977; R.C.M. 1947, 23-4901.

13-37-302. En. 23-4902 by Sec. 2, Ch. 263, L. 1974; amd. Sec. 2, Ch. 538, L. 1977; R.C.M. 1947, 23-4902; amd. Sec. 1, Ch. 579, L. 1979.

13-37-303. En. 23-4903 by Sec. 3, Ch. 263, L. 1974; R.C.M. 1947, 23-4903; amd. Sec. 2, Ch. 579, L. 1979; amd. Sec. 34, Ch. 370, L. 1987.

13-37-304. En. 23-4904 by Sec. 4, Ch. 263, L. 1974; amd. Sec. 3, Ch. 538, L. 1977; R.C.M. 1947, 23-4904; amd. Sec. 3, Ch. 579, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 703, L. 1985; amd. Sec. 2, Ch. 361, L. 1991.

13-37-305. En. 23-4905 by Sec. 5, Ch. 263, L. 1974; R.C.M. 1947, 23-4905; amd. Sec. 3, Ch. 361, L. 1991.

13-37-306. En. 23-4906 by Sec. 6, Ch. 263, L. 1974; amd. Sec. 4, Ch. 538, L. 1977; R.C.M. 1947, 23-4906.

13-37-307. En. Sec. 5, Ch. 579, L. 1979.

13-37-308. En. Sec. 4, Ch. 579, L. 1979.

CHAPTER 38

POLITICAL PARTIES

Part 1 — General Provisions

13-38-101. Powers of parties.
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13-38-103. Department of justice to submit new-voter lists to major political parties.
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13-38-201. Election of committeemen at primary.
13-38-202. Committeemen as party representatives — county and city central committees.
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13-38-204. Committees to fill vacancies among nominees under certain circumstances.
13-38-205. Organization and operation of committee.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Nominations by political parties, Title 13, ch. 10, parts 4 through 6.

Unlawful for political parties to endorse judicial candidate, 13-35-231.

Part 1
General Provisions

13-38-101. Powers of parties. Each political party shall have power to:

(1) make its own rules;

(2) provide for and select its own offices;

(3) call conventions and provide for the number and qualification of delegates;

(4) adopt platforms;

(5) provide for selection of delegates to national conventions;

(6) provide for the nomination of presidential electors;

(7) provide for the selection of national committeemen and women;

(8) make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one county where such vacancies are caused by death, resignation, or removal from the electoral district;

(9) perform all other functions inherent in such an organization.

History: En. Sec. 81, Ch. 368, L. 1969; R.C.M. 1947, 23-3406.

Cross-References

Vacancy after primary and prior to general election, 13-10-327.

Presidential electors, 13-25-101.

13-38-102. Repealed. Sec. 1, Ch. 513, L. 1981.

History: En. Sec. 83, Ch. 368, L. 1969; R.C.M. 1947, 23-3407.

13-38-103. Department of justice to submit new-voter lists to major political parties. No later than January 31 in any year in which a general election is held, the department of justice shall submit to the chairman of each major political party of the state four copies of a list prepared from its driver license registration files, showing names and addresses of all persons, compiled on a county by county basis, who have reached voting age since the last general election and those who will reach voting age before the date of the general election. No official of the department shall be responsible for any honest error or omission in preparing the lists.

History: En. Sec. 17, Ch. 368, L. 1969; amd. Sec. 1, Ch. 257, L. 1971; amd. Sec. 1, Ch. 132, L. 1973; R.C.M. 1947, 23-3001.

Cross-References

Exemptions from prohibition against distribution of lists, 2-6-109.

13-38-104. Party rules to be filed with secretary of state. The state central committee of each political party in this state must file a current copy of the rules of government of the party with the secretary of state.

History: En. Sec. 261, Ch. 571, L. 1979.

13-38-105. County committee rules to be filed with election administrator. The county committee of each political party of this state must file a current copy of its rules of government with the election administrator.

History: En. Sec. 262, Ch. 571, L. 1979.

Cross-References

County Clerk and Recorder as Election Administrator, 13-1-301.

Part 2
Committee Structure

13-38-201. Election of committeemen at primary. (1) Each political party shall elect at each primary election one man and one woman who shall serve as committeemen for each election precinct. The committeemen shall be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party shall be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner as he does for other candidates.

History: En. Sec. 72, Ch. 368, L. 1969; R.C.M. 1947, 23-3401.

Cross-References

Rules for determining residence in general, 1-1-215.

Definition of "registrar", 13-1-101.

Registered voter, Title 13, ch. 2.

Declaration of nomination, 13-10-201.

13-38-202. Committeemen as party representatives — county and city central committees. (1) Each committeeman shall represent his political party for the precinct in all ward or subdivision committees formed.

(2) The committeemen in each precinct shall constitute the county central committee of the respective political parties.

(3) Committeemen who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committeeman has a term of 2 years from the date of his election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.

History: **En. Sec. 73, Ch. 368, L. 1969; R.C.M. 1947, 23-3402.**

13-38-203. Powers of county and city central committees — role of state central committee where no county central committee exists. (1) The county and city central committee may:

(a) make rules for the government of its political party in each county not inconsistent with any of the provisions of the election laws of this state or the rules of its state political party;

(b) elect two county members of the state central committee, one of whom shall be a man and one of whom shall be a woman, elect the members of the congressional committee, and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

History: **En. Sec. 74, Ch. 368, L. 1969; amd. Sec. 25, Ch. 365, L. 1977; R.C.M. 1947, 23-3403.**

13-38-204. Committees to fill vacancies among nominees under certain circumstances. County and city central committees may make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary election if the vacancy is caused by death, resignation, or removal from the electoral district but not otherwise.

History: **En. Sec. 75, Ch. 368, L. 1969; R.C.M. 1947, 23-3404.**

Cross-References

Filling of vacancy in Legislature, 5-2-403.

Filling vacancy in office of State Senator, 5-2-406.

Filling vacancy on Board of County Commissioners, 7-4-2106.

Filling vacancy in county office, 7-4-2206.

13-38-205. Organization and operation of committee. (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one or more vice-chairmen. The chairman or first vice-chairman shall be a woman. The committee shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise all powers conferred upon the county, city, state, and congressional central committees by the election laws of this state.

(3) The chairman of the county central committee shall call the central committee meeting and not less than 4 days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committeeman. If party

rules permit the use of a proxy, no proxy may be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates.

History: En. Sec. 76, Ch. 368, L. 1969; amd. Sec. 1, Ch. 216, L. 1973; amd. Sec. 26, Ch. 365, L. 1977; R.C.M. 1947, 23-3405.

TITLE 14

RESERVED

TITLE 15

TAXATION

Ch.

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15. Property Tax Appeals.
16. Collection of Property Taxes.
17. Tax Sales.
18. Ownership Interests in Land Sold for Taxes.
Chapters 19 through 22 reserved.
23. Centrally Assessed Property.
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30. Individual Income Tax.
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35. Coal Severance Tax.
36. Oil and Gas Severance Tax.
37. Mining License Taxes.
38. Resource Indemnity Trust Tax.
Chapters 39 through 43 reserved.
44. Forest Lands Tax.
Chapters 45 through 49 reserved.
50. Public Contractor's Fees and Tax.
51. Electric Energy Producers' License Tax.
52. Collection of Transportation and Communications License Taxes. Repealed. Sec. 22, Ch. 294, L. 1979.
53. Telephone Company License Tax.
54. Express Company License Tax. Repealed. Sec. 1, Ch. 595, L. 1991.
55. Freight Line Company License Tax. Repealed. Sec. 15, Ch. 10, Sp. L. July 1992.
56. Sleeping Car Company License Tax. Repealed. Sec. 2, Ch. 595, L. 1991.
57. Store Licenses. Repealed. Sec. 3, Ch. 658, L. 1991.
58. Coal Retailer's License Tax. Repealed. Sec. 2, Ch. 658, L. 1991.
59. Cement Taxes.
60. Nursing Facility Utilization Fee.
Chapters 61 through 64 reserved.
65. Lodging Facility Use Tax.
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70. Gasoline and Vehicle Fuels Taxes.
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CHAPTER 1

TAX ADMINISTRATION

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15-1-803. Rules.

Chapter Cross-References

Revenue and finance, Art. VIII, Mont. Const.

Duty of legislative subcommittees to study problems of assessment and collection of taxes, 5-5-215.

Legislative Fiscal Analyst to estimate revenue from existing and proposed taxes, 5-12-302.

Revenue Oversight Committee, Title 5, ch. 18.

Taxation of alcoholic beverages, Title 16, ch. 1, part 4.

Taxation of tobacco products, Title 16, ch. 11.

Revenue anticipation notes, Title 17, ch. 1, part 2.

Tax on gross receipts from parimutuel betting, 23-4-304.

Towns and cities may tax auctioneers, 30-11-516.

Insurance premium tax, 33-2-705.

Taxation of business trusts, 35-5-205.

Fire insurance premium tax, 50-3-109.

Federal tax liens, Title 71, ch. 3, part 2.

Inheritance and estate taxes, Title 72, ch. 16.

Department of Commerce to gather information for the purposes of making long-range plans on factors influencing economic enterprises, including taxes, 90-1-102.

Part 1

General Provisions

15-1-101. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except that property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and, beginning January 1, 1994, forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(h) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(i) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(j) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, and domestic ungulates.

(k) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(l) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(m) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(n) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(o) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(p) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(q) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board.

History: (1)En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R.C.M. 1921; Cal. Pol. C. Sec. 3617; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 1, Ch. 99, L. 1939; amd. Sec. 1, Ch. 296, L. 1967; amd. Sec. 1, Ch. 450, L. 1975; amd. Sec. 1, Ch. 498, L. 1977; amd. Sec. 48, Ch. 566, L. 1977; Sec. 84-101, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 3, L. 1923; re-en. Sec. 2122.4, R.C.M. 1935; amd. Sec. 48, Ch. 405, L. 1973; amd. Sec. 3, Ch. 52, L. 1977; Sec. 84-704, R.C.M. 1947; R.C.M. 1947, 84-101, 84-704; amd. Sec. 1, Ch. 39, L. 1979; amd. Sec. 14, Ch. 693, L. 1979; amd. Sec. 1, Ch. 578, L. 1981; amd. Sec. 2, Ch. 488, L. 1983; amd. Sec. 1, Ch. 632, L. 1983; amd. Sec. 1, Ch. 20, L. 1985; amd. Sec. 1, Ch. 570, L. 1985; amd. Sec. 1, Ch. 743, L. 1985; amd. Sec. 35, Ch. 370, L. 1987; amd. Sec. 1, Ch. 613, L. 1987; amd. Sec. 2, Ch. 659, L. 1987; amd. Sec. 1, Ch. 10, Sp. L. June 1989; amd. Sec. 169, Ch. 411, L. 1991; amd. Sec. 6, Ch. 680, L. 1991; amd. Sec. 1, Ch. 705, L. 1991; amd. Sec. 8, Ch. 783, L. 1991; amd. Sec. 4, Ch. 379, L. 1993; amd. Sec. 1, Ch. 417, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 379 inserted definitions of gas and natural gas; and made minor changes in style. Chapter 417 in definition of livestock inserted "llamas, alpacas, bison, and domestic ungulates"; and made minor changes in style.

Cross-References

Assessment of credits, 15-8-201.

Definition of "school district", 20-15-403.

15-1-102. Person defined. As used in this title (except chapters 30 and 31), unless the context indicates otherwise, the term "person" means an individual, corporation (domestic or foreign), partnership, association, joint-stock company, or syndicate.

History: En. 84-102 by Sec. 1, Ch. 52, L. 1977; R.C.M. 1947, 84-102.

15-1-103. Destruction of tax records authorized — procedure. (1) Notwithstanding the provisions of any other chapter of this code, the department of revenue is authorized to destroy tax records more than 3 years old as shall be determined to be of no further value.

(2) Authorization for destruction of tax records shall be by the director of revenue or authorized employees of the department. A copy of the authorization and authenticated list shall be maintained by the department.

History: En. Sec. 1, Ch. 187, L. 1963; amd. Sec. 1, Ch. 9, L. 1969; amd. Sec. 61, Ch. 405, L. 1973; R.C.M. 1947, 84-724.

15-1-104. Treasurers to destroy certain tax records. The treasurer of each county, city, or town in the state of Montana may destroy all tax records in his possession more than 30 years old.

History: En. 84-4175.2 by Sec. 2, Ch. 286, L. 1975; R.C.M. 1947, 84-4175.2.

15-1-105. Fines and forfeitures to county. All fines, forfeitures, and penalties incurred by a violation of any of the provisions of the state tax laws, except those paid to a justice's court, must be paid into the treasury for the use of the county where the person against whom the recovery is had resides.

History: En. Sec. 198, p. 127, L. 1891; re-en. Sec. 4015, Pol. C. 1895; re-en. Sec. 2733, Rev. C. 1907; re-en. Sec. 2062, R.C.M. 1921; re-en. Sec. 2062, R.C.M. 1935; amd. Sec. 35, Ch. 405, L. 1973; R.C.M. 1947, 84-515; amd. Sec. 1, Ch. 581, L. 1979; amd. Sec. 2, Ch. 225, L. 1983; amd. Sec. 9, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

15-1-106 through 15-1-110 reserved.

15-1-111. Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation. (1) Prior to September 1, 1990, the department's agent in the county shall supply the following information to the department for each taxing jurisdiction within the county:

(a) the number of mills levied in the jurisdiction for taxable year 1989;

(b) the number of mills levied in the jurisdiction for taxable year 1990;

(c) the total taxable valuation for taxable years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and

(d) the total taxable valuation for taxable years 1989 and 1990, reported separately for each year, of all personal property secured by real property.

(2) After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, and any reduction in taxes based upon recalculation of

the effective tax rate for property in 15-6-145. The department shall total the amounts for all taxing jurisdictions within the county.

(3) (a) The department shall remit to the county treasurer 50% of the amount of revenue reimbursable, determined pursuant to subsection (1), on or before November 30 and the remaining 50% on or before May 31.

(b) For tax year 1993 and for each tax year thereafter, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, as adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

(4) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

(5) For the purposes of this section and subject to subsection (7), "taxing jurisdiction" means a jurisdiction levying mills against personal property and includes but is not limited to a county, city, school district, tax increment financing district, miscellaneous taxing district, and the state of Montana.

(6) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse eligible taxing jurisdictions for reductions in tax rates on personal property.

(7) The following apply to taxing jurisdictions that were altered after tax year 1989:

(a) A taxing jurisdiction that existed in tax year 1989 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1989 and that is split into two or more taxing jurisdictions is entitled to reimbursement based on the portion of 1989 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1989 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 1989 is not entitled to reimbursement under this section unless the jurisdiction was created as described in subsection (7)(b).

History: En. Sec. 9, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 773, L. 1991; amd. Sec. 1, Ch. 499, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 499 deleted former (1) that read: "(1) (a) On or before May 1, 1990, the department of revenue shall remit to the county treasurer of each county 30% of the reimbursement amount specified in subsection (1)(b), as computed by the department. The department shall base the reimbursement on the reduction in personal property tax revenues due to the reduction in personal property tax rates for class eight property, as provided for in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145. The reimbursement basis must also include loss of personal property tax revenue due to the reclassification of new industrial property from class five to class eight with the reduced tax rate. The determination of the reimbursement basis must be made in the year in which the reclassification is made.

(b) The reimbursement revenue must be based on the county's taxable value and mill levies for tax year 1989"; substituted (3)(a) requiring Department to remit to the County Treasurer 50% of the amount of revenue reimbursable, determined pursuant to subsection (1), on or before November 30 and the remaining 50% on or before May 31 for former language that read: "For taxable year 1990 and for each year thereafter, the department shall remit to the county treasurer the base amount of revenue reimbursable, determined pursuant to subsection (3), as follows:

(a) on or before November 30, 1990, and on or before each November 30 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county; and

(b) on or before May 31, 1991, and on or before each May 31 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county"; inserted (3)(b) concerning remittance for tax year 1993 and succeeding years; at end of (4), after "jurisdiction", substituted "as calculated by the department" for "in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as current year mill levies on personal property taxes are distributed"; substituted (5) defining taxing jurisdiction as including a county, city, school district, tax increment financing district, and miscellaneous taxing district and the State of Montana for former definition that read: "For the purposes of this section, "taxing jurisdiction" means local governments and includes school districts, each municipality with tax increment financing, and the state of Montana"; near end of (6) substituted "eligible taxing jurisdictions" for "school districts and local governments"; inserted (7) providing that a taxing jurisdiction existing in tax year 1989 but no longer in existence is not entitled to reimbursement, that a taxing jurisdiction that existed in tax year 1989 that is split into two or more taxing jurisdictions is entitled to reimbursement based on the portion of 1989 taxable value within each new jurisdiction, and that a taxing jurisdiction not in existence in tax year 1989 is not entitled to reimbursement unless created as the result of the splitting of a taxing jurisdiction that was in existence in tax year 1989; and made minor changes in style.

Applicability: Section 2, Ch. 499, L. 1993, provided: "[This act] applies to all reimbursements beginning with tax year 1993. [This act] does not affect the reimbursement payment due May 31, 1993, or any previous reimbursement. The first reimbursement payment under [this act] is payable on or before November 30, 1993."

Part 2
Department of Revenue

Part Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Director of Department of Revenue to prepare revenue estimates and continuously study fiscal problems and tax structures, 2-7-104.

Duty of public officials to supply revenue information on request, 2-7-105.

Creation of Department of Revenue — head, 2-15-1301.

Director of Department of Revenue, 2-15-1302.

Legislative oversight of Department of Revenue, 5-18-107.

Officers of municipal corporations jointly and severally liable for losses suffered through delinquency in providing information, 15-1-301.

Duties of Department — classification and appraisal of property, Title 15, ch. 7, part 1; Title 15, ch. 8.

Department authorized to request and collect federal money in lieu of taxes, Title 17, ch. 3, part 3.

Department as state debt collector, Title 17, ch. 4, part 1.

Department to approve condominium declaration, 70-23-304.

Department to compute taxes in determining state land equalization payment, 77-1-502.

15-1-201. Administration of revenue laws. (1) (a) The department of revenue shall have and exercise general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapter 70, and over its agents and any officers of municipal corporations having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) The department of revenue shall adopt rules specifying which types of property within the several classes are considered "comparable property" as described in 15-1-101.

(c) The department shall also adopt rules specifying the methodology to be used in conducting sales assessment ratio studies and in determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information about the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and other information as may be needful and helpful in the work of the department in a form prescribed by the department. It is the duty of all public officers to fill out properly and return promptly to the department all forms and aid the department in its work. The department shall examine the records of all municipal corporations for purposes considered needful or helpful.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(part); (1)(b), (1)(c)En. Sec. 10, Ch. 743, L. 1985; amd. Sec. 21, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 in (1)(a) removed brackets around reference to Title 15, chapter 70; and made minor changes in style.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Department authorized to adopt rules relating to:

payment of taxes by electronic funds transfer, 15-1-803;

sales assessment ratio studies, 15-6-145;

realty transfer certificates, 15-7-306;

centrally assessed property, 15-23-108;

taxation of mobile homes and housetrailers, 15-24-207;

income tax, 15-30-305;

new or expanded industry credit, 15-31-127;

allocation of income for purposes of corporation license tax, 15-31-313;

corporation income tax, 15-31-407;

corporation license or income taxes, 15-31-501;

energy-related tax incentives, 15-32-105, 15-32-203;

the coal severance tax, 15-35-122;

public contractors' returns, 15-50-301;

telephone company license tax, 15-53-104;

gasoline and vehicle fuels taxes, 15-70-104;

licensing and taxation of public contractors, 37-71-103;

taxation of motor vehicles, 61-3-506.

List of corporations furnished by Secretary of State, 15-31-603.

State-sponsored credit cards, Title 31, ch. 1, part 6.

15-1-202. Enforcement of revenue laws. (1) The department of revenue may direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officials and persons or their agents for failure or neglect to comply with the provisions of the statutes, except Title 15, chapter 70, governing the revenue of the state or municipal corporations. The department shall cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct, neglect of duty, or failure of an assessor to comply with the certification or continuing education requirements of 15-8-106.

(2) The department may require county attorneys to assist in the commencement and prosecution of actions and proceedings in their respective counties for penalties, forfeitures, removals, and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws or for failure of an assessor to comply with the certification or continuing education requirements of 15-8-106.

(3) Nothing in this section affects the authority of any other person, public officer, or public body to pursue any other legal process for the removal from office of an assessor who forfeits office for failure to comply with certification and continuing education requirements.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(6), (7); amd. Sec. 4, Ch. 623, L. 1989; amd. Sec. 22, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 in (1) removed brackets around reference to Title 15, chapter 70.

Cross-References

Official misconduct, 45-7-401.

15-1-203. Study of other tax systems. The department may investigate the tax systems of other states and countries and formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(14).

15-1-204. Consultation with governor. The department shall consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto, and the progress of the work of the department and furnish the governor such assistance as he may require.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(15).

15-1-205. Biennial report — contents. (1) The department shall transmit to the governor 20 days before the meeting of the legislature and make available to the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value, in tabulated form, with recommendations for improvements in the system of taxation, together with alternative measures as may be formulated for the consideration of the legislature. The department shall follow the provisions of 5-11-210 in preparing the report.

(2) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department or its agent is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(3) The data described in subsection (2), if reported, must be related to the income and age of the taxpayer whenever the information is available.

(4) (a) When reporting the data described in subsection (2)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(5) In reporting the data described in subsection (2), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(6) The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(7) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

(8) The department shall include the inheritance tax information required by 72-16-202 in a separate section of the report.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(16); amd. Sec. 1, Ch. 584, L. 1979; amd. Sec. 1, Ch. 500, L. 1987; amd. Sec. 21, Ch. 112, L. 1991; amd. Sec. 23, Ch. 10, L. 1993; amd. Sec. 18, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 10 in (7), after "report", inserted "prepared by the department of transportation"; and made minor changes in style.

Chapter 349 near beginning of first sentence of (1) substituted "make available" for "as provided in 5-11-210, submit" and inserted second sentence that read: "The department shall follow the provisions of 5-11-210 in preparing the report"; inserted (8) requiring inclusion of inheritance tax information; and made minor changes in style.

Cross-References

Critique of Revenue Oversight Committee to be appendix to report, 5-18-108.

Basic gasoline license tax, Title 15, ch. 70, part 2.

15-1-206. Waiver and abatement of penalties — interest. (1) The department may, in its discretion, waive the assessment of penalty for the late filing of any tax statement or return required to be filed with the department when the filing is done within 5 days of the date specified for filing the return or statement and for the late payment of any tax collected by the department when the payment is made within 5 days of the date specified for payment of the tax.

(2) Whenever the department waives or abates a penalty provided for in this title, it also may, in its discretion, waive or abate interest not to exceed $100 due upon the tax.

(3) Whenever the department is notified of a change in federal taxable income as the result of a federal adjustment or upon filing an amended federal return, as provided for in 15-30-304, the department shall abate the interest on the additional tax liability from the date the department is notified until the department sends the statement of increased tax liability to the taxpayer.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(17); amd. Sec. 1, Ch. 477, L. 1981.

15-1-207. Writeoff of collection of tax, penalty, or interest — rules. (1) The department of revenue may write off the collection of any tax, penalty, or interest due to the state under this title when the department determines that it is not cost-effective for the department to attempt to collect the tax, penalty, or interest. The department shall establish procedures to determine the cost-effectiveness of collecting the tax, penalty, or interest. If the department writes off the collection of any tax, penalty, or interest, the department shall place in the taxpayer's file a written justification for the writeoff that includes a determination that attempted collection is not cost-effective.

(2) The department shall prescribe rules to establish the procedures to carry out the purposes of this section.

History: En. Sec. 1, Ch. 84, L. 1991.

15-1-208 through 15-1-210 reserved.

15-1-211. Uniform tax review procedure — notice — appeal. (1) The department of revenue shall provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

(a) The tax review procedure described in this section applies to all taxes administered by the department except inheritance taxes, estate taxes, and property taxes. The procedure applies to any revised assessment of centrally assessed property taxed pursuant to chapter 23.

(b) The term "taxpayers", as used in this section, includes all persons determined by the department to have a potential tax liability.

(2) (a) If the department determines that a request for a refund should be denied in whole or part, it shall notify the taxpayer of the determination. If the department determines that a person has failed to pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the running of any applicable statute of limitations regarding the assessment of the tax.

(b) A notice under this section must clearly state:

(i) the reasons for the department's determination that a refund is not due or that tax plus interest and penalty, if any, is due;

(ii) the taxpayer's right to a review by the department and his right to appeal after a final department decision;

(iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right to contest the department's determination under this section or to file an appeal with the state tax appeal board;

(iv) that the taxpayer has 30 days to either notify the department in writing that he does not agree with an assessment or pay the amount assessed;

(v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless he notifies the department that he disagrees with an assessment or pays within 30 days; and

(vi) that the notice stops the running of the statute of limitations regarding the assessment of the tax.

(3) (a) A taxpayer shall notify the department, in writing, that he objects to the determination within 30 days from the date the notice is mailed. The notification by the taxpayer is not required to specify the reasons for the disagreement or be in any particular form. If the taxpayer does not notify the department within 30 days:

(i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

(ii) the taxpayer waives any further right to review under this section or to appeal to the state tax appeal board; and

(iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) A taxpayer who notifies the department pursuant to subsection (3)(a) that he disagrees with a tax assessment shall present his objections, the reasons for his objections, and any other information to the administrator of the division that administers the tax or to his designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

(c) Within 60 days after the taxpayer has presented his objections, as provided in subsection (3)(b), the administrator or his designee shall issue a written decision addressing the taxpayer's objections and describing the reasons for the determination. The administrator's decision must also clearly set forth the taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director of revenue.

(4) (a) A taxpayer shall notify the department in writing that he objects to the administrator's decision within 30 days from the date that the decision is mailed, or he may appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer waives any further right to review or appeal and a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision pursuant to subsection (4)(a) shall present his objections, his reasons for the objections, and any other information to the director of revenue or his designee within 60 days after the notice referred to in subsection (4)(a) is mailed. The director or his designee may consider written information, hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana Administrative Procedure Act.

(c) Within 60 days after the taxpayer has presented his objections, the director or his designee shall issue a written decision addressing the objections and describing the reasons for the decision. The director's decision is the final decision and assessment of the department.

(5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by the board or, if further appeals are filed, by the appropriate court. However, any interest required by law must continue to accrue.

(6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the department.

(b) If the director notifies the board within 30 days after an appeal is filed that he has not had an opportunity to review the administrator's decision and he believes a review may be helpful in resolving the controversy, the board shall stay the appeal for a time the board considers reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide his objections and reasons for his objections to the director so that the director or his designee may review the controversy and issue a decision within the period of the stay granted by the board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal resumed.

(7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by mutual consent of the department and the taxpayer. The department shall consent to all reasonable requests for extension of deadlines.

(8) (a) The director of revenue or his designee is authorized to enter into an agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department for any taxable period.

(b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.

History: En. Sec. 1, Ch. 811, L. 1991.

15-1-212 through 15-1-220 reserved.

15-1-221. Short title. Sections 15-1-221 through 15-1-223 may be cited as the "Montana Taxpayer Bill of Rights".

History: En. Sec. 1, Ch. 619, L. 1991.

15-1-222. Taxpayer bill of rights. The department of revenue shall in the course of performing its duties in the administration and collection of the state's taxes ensure that:

(1) the taxpayer has the right to record any interview, meeting, or conference with auditors or any other representatives of the department;

(2) the taxpayer has the right to hire a representative of the taxpayer's choice to represent the taxpayer's interests before the department or any tax appeal board. The taxpayer has a right to obtain a representative at any time, except that the selection of a representative may not be used to unreasonably delay a field audit that is in progress. The representative must have written authorization from the taxpayer to receive from the department confidential information concerning the taxpayer. The department shall provide copies to the authorized representative of all information sent to the taxpayer and shall notify the authorized representative concerning contacts with the taxpayer.

(3) the taxpayer has the right to obtain tax advice from the department. The taxpayer has a right to the waiver of penalties and interest, but not taxes, when he has relied on written advice provided to him by an employee of the department.

(4) at the discretion of the department, the taxpayer has the right to pay delinquent taxes, interest, and penalties on an installment basis. This subsection applies only to taxes collected by the department, provided the taxpayer meets reasonable criteria.

(5) the taxpayer has the right to a complete and accurate written description of the basis for any additional tax assessed by the department;

(6) the taxpayer has the right to a review by management level employees of the department for any additional taxes assessed by the department;

(7) the taxpayer has the right to a full explanation of the available procedures for review and appeal of additional tax assessments;

(8) the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have the state tax appeal board or a court, or both, review any final decision of the department assessing an additional tax. The taxpayer shall seek a review in a timely manner. A taxpayer is entitled to collect court costs and attorney fees from the department for frivolous or bad faith lawsuits as provided in 25-10-711.

(9) the taxpayer has the right to a full explanation of the department's authority to collect delinquent taxes, including the procedures and notices that are required to protect the taxpayer;

(10) the taxpayer has the right to have certain property exempt from levy and seizure as provided in Title 25, chapter 13, part 6, and any other applicable provisions in Montana law;

(11) the taxpayer has the right to the immediate release of any lien the department has placed on property when the tax is paid or when the lien is the result of an error by the department;

(12) the taxpayer has the right to assistance from the department in complying with state and local tax laws that the department administers; and

(13) the taxpayer has the right to be guaranteed that an employee of the department is not paid, promoted, or in any way rewarded on the basis of assessments or collections from taxpayers.

History: En. Sec. 2, Ch. 619, L. 1991.

15-1-223. Office of taxpayer assistance. (1) The department of revenue shall establish and maintain an office of taxpayer assistance.

(2) The office shall assist taxpayers by:

(a) providing easily understandable tax information on audits and corrections and review procedures of the department;

(b) providing easily understandable information on appeal procedures;

(c) answering questions regarding preparing and filing returns and reports with the department; and

(d) locating documents or payments filed with or submitted to the department.

(3) The office of taxpayer assistance shall also:

(a) receive and evaluate complaints related to improper or abusive behavior or inefficient service provided by employees of the department and recommend appropriate action to the director of the department of revenue to resolve the complaints;

(b) compile data on the number and type of taxpayer complaints received and evaluate the actions taken to resolve complaints;

(c) survey taxpayers to obtain their evaluation of the quality of service provided by the department;

(d) monitor the department's compliance with the taxpayer bill of rights and report any abuses to the director of the department;

(e) monitor the department's collection activities to:

(i) report any abuses in collection activities by the department to the director;

(ii) recommend to the director whether a particular collection activity should be stopped if the taxpayer has not had an adequate opportunity to discuss alternative means of payment; and

(f) perform any other functions that the director may assign to assist taxpayers in complying with Montana's tax laws.

History: En. Sec. 3, Ch. 619, L. 1991.

Part 3

Investigation and Hearings

15-1-301. Investigations by department. (1) The department of revenue may examine all cases where evasion or violation of the laws for taxation of property, proceeds, occupation, or business is alleged, complained of, or discovered and ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(2) (a) The department may inspect and examine or cause an inspection and examination of the records of the officers of any municipality whenever such officer has failed, neglected, or refused to return properly the information required by 15-1-201 within the time set by the department. Upon completion of such inspection and examination, the department shall transmit to the clerk or other proper official of the municipality a statement of the expenses incurred by the department to secure the necessary information. Within 60 days after the receipt by the municipality of the above statement, the same shall be audited as other claims of the municipal corporation are audited and shall be paid into the state treasury. If the statement is not paid, the attorney general shall institute an action in the proper court against the municipality to recover the same.

(b) The officers responsible for the furnishing of the information collected pursuant to 15-1-201 shall be jointly and severally liable for any loss the municipality may suffer through their delinquency. No payment may be made to them for salary or on any other account until the cost of such inspection and examination as provided above has been paid into the treasury or to the proper officers of such municipality. They shall also be subject to the other fines and penalties as prescribed by law.

(3) The department may require persons to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes, and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(4) The department may summon witnesses to appear and give evidence and to produce records, books, papers, and documents relating to any matter which the department has authority to investigate and determine.

(5) In any matter which the department has authority to investigate and determine, it may cause the deposition of witnesses residing within or without the state or absent therefrom to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(9) thru (13).

Cross-References

Depositions and discovery, Rules 26 through 37, M.R.Civ.P. (see Title 25, ch. 20).

15-1-302. Witnesses — oaths, contempt, and fees. (1) Oaths to witnesses in any investigation by the department may be administered by the director of revenue or his agent.

(2) In case any witness shall fail to obey any summons to appear before the department or shall refuse to testify or answer any material question or to produce records, books, papers, or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the board or to punish the witness for such neglect or refusal.

(3) Any person who shall testify falsely in any material matter under consideration by the department shall be guilty of perjury and punished accordingly.

(4) Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the department.

History: En. Sec. 16, Ch. 3, L. 1923; re-en. Sec. 2122.16, R.C.M. 1935; amd. Sec. 59, Ch. 405, L. 1973; R.C.M. 1947, 84-716.

Cross-References

Subpoena of person for failure to file report on centrally assessed property, 15-23-104.

Witness fees, Title 26, ch. 2, part 5.

15-1-303. Penalty for refusal to furnish information. (1) If a person refuses to allow inspection of any books or records when requested by the department or its authorized agent or refuses or neglects to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property, the department shall make a determination and assessment of the property as in its judgment appears to be just and equitable and may add to the assessment an amount not to exceed 20% of the assessment as a penalty for the refusal or neglect. The department shall immediately notify the person assessed of its action, either by certified mail or by personal service of the notice.

(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within 15 days after receipt of the assessment, the taxpayer may request an informal conference with the agent of the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of the failure to supply the information requested by the department. Within 10 days after the conference, the agent of the department shall notify the taxpayer by certified mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of the failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, the taxpayer may appeal to the county tax appeal board within 20 days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of the failure to supply the information that the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty to less than 20% of the assessment, or if the assessment is modified pursuant to subsection (2)(b)(i), to less than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within 30 calendar days after receipt of the county tax appeal board's decision. When deciding an appeal brought under this subsection, the state tax appeal board shall follow the provisions of subsections (2)(b) and (2)(c).

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303.

History: En. Sec. 14, Ch. 3, L. 1923; re-en. Sec. 2122.14, R.C.M. 1935; amd. Sec. 58, Ch. 405, L. 1973; R.C.M. 1947, 84-714; amd. Sec. 1, Ch. 357, L. 1985; amd. Sec. 1, Ch. 227, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 227 in (1), near end, deleted provision for registered mail; in (2)(a), near beginning after "assessment", deleted "or by April 1, whichever is later"; in (3) substituted "30 calendar days" for "20 days"; and made minor changes in style. Amendment effective March 30, 1993.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

Cross-References

Estimating value of centrally assessed property on failure to file report, 15-23-104.

Part 4

Protest Payments, Actions to Recover, and Alternative Remedies

Part Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Judgment to be against Treasurer in suit to recover taxes paid under protest when funds held by Treasurer, 15-8-115.

Refund of taxes illegally refunded — concurrent remedy, 15-16-602.

Costs allowed in action involving legality of any tax, 25-10-101, 25-10-102.

Justice Court without jurisdiction to hear tax issues, 25-31-101.

15-1-401. Repealed. Sec. 7, Ch. 501, L. 1981.

History: En. Sec. 1, Ch. 188, L. 1921; re-en. Sec. 2409, R.C.M. 1921; re-en. Sec. 2409, R.C.M. 1935; amd. Sec. 1, Ch. 197, L. 1955; amd. Sec. 3, Ch. 126, L. 1963; R.C.M. 1947, 84-4501; amd. Sec. 2, Ch. 581, L. 1979; amd. Sec. 5, Ch. 463, L. 1981.

15-1-402. Payment of taxes under protest. (1) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15 shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) All property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7,

chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(5) The governing board of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged the local government units.

(b) If the action is finally determined adversely to the department of revenue, a county, a municipality, or the treasurer of a county or a municipality, then the treasurer shall, upon receiving a certified copy of the final judgment in the action from the state tax appeal board or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee deposited in the protest fund, and not released pursuant to subsection (5), as the person holding the judgment is entitled to recover, together with interest from the date of payment under protest, at the greater of:

(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or

(ii) 6% a year.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then interest owed, and lastly to costs.

(d) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the greater of the rates referred to in subsections

(6)(b)(i) and (6)(b)(ii) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus four percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund, except that amount generated by the all-purpose mill levy, or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

History: En. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909; re-en. Sec. 2269, R.C.M. 1921; amd. Sec. 1, Ch. 142, L. 1925; re-en. Sec. 2269, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1955; amd. Sec. 151, Ch. 516, L. 1973; amd. Sec. 1, Ch. 348, L. 1977; amd. Sec. 1, Ch. 394, L. 1977; R.C.M. 1947, 84-4502; amd. Sec. 1, Ch. 281, L. 1979; amd. Sec. 1, Ch. 680, L. 1979; amd. Sec. 6, Ch. 463, L. 1981; amd. Sec. 4, Ch. 501, L. 1981; amd. Sec. 1, Ch. 26, Sp. L. June 1986; amd. Sec. 1, Ch. 213, L. 1989; amd. Sec. 1, Ch. 594, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 594 throughout section substituted reference to property tax or fee for reference to tax or license fee; in (1), after "may", deleted "proceed under 15-1-406 or may"; substituted (2) requiring payment of tax or fee under protest before a refund may be made for former (2) that read: "After having exhausted the administrative appeals available under Title 15, chapters 2 and 15, a person or his legal representative may bring an action in any court of competent jurisdiction against the officers to whom said tax or license fee was paid or against the county or municipality in whose behalf the same was collected and the department of revenue"; deleted former (3) that read: "(3) Both the officers to whom the tax or license fee was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with timely summons and complaint within the time prescribed"; deleted former (4) that read: "(4) An action instituted to recover any such portions of tax or license fee paid under protest must be commenced and summons timely served within 60 days after the date of the final decision of the state tax appeal board"; in (4), at end of first sentence, and in (6)(b) substituted "subsection (5)" for "subsection (7)"; near beginning of (6)(a), after "action", inserted "before the county tax appeal board, state tax appeal board, or district court" and after "in favor of the" inserted "department of revenue"; near beginning of (6)(b), after "adversely to", inserted "the department of revenue"; in (6)(e) substituted "subsection (6)(d)" for "subsection (8)(d)" and substituted "subsections (6)(b)(i) and (6)(b)(ii)" for "subsections (8)(b)(i) and (8)(b)(ii)"; and made minor changes in style.

Cross-References

Section applicable to taxes levied to meet bond obligations and expenses of county water/sewer districts, 7-13-2308.

Section applicable to taxes paid under protest after increase of assessment over owner's statement, 15-1-403.

Payment of assessment for forest protection under protest, 76-13-210.

15-1-403. Assessment for taxation — increase over statement of owner. (1) Whenever any person has delivered to the department of revenue or its agent a sworn statement of his locally assessed property subject to taxation as now provided by law and giving the estimated value of such property and the department or its agent shall increase such estimated value or add other property to such assessment list, the agent shall, at least 10 days prior to the meeting of the county tax appeal board, give to such person written notice of such change, which notice shall be substantially in the following form:

(Date) . . . .

Mr. ......:

A change has been made in your assessment list as follows:

(Set out and describe specifically changes made in list.)

. . . . , Agent
Department of Revenue

(2) Such person may then appear before the county tax appeal board and contest the same. If the assessment of any such person has been added to or changed, either by the department or by the county tax appeal board, and such person has not been notified thereof and given an opportunity to contest the same before the county tax appeal board, the tax on such increased value or added property shall, upon such facts being established, be adjudged by the state tax appeal board to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in 15-1-402.

History: En. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2743, Rev. C. 1907; amd. Sec. 2, Ch. 135, L. 1909; re-en. Sec. 2270, R.C.M. 1921; amd. Sec. 1, Ch. 142, L. 1925; re-en. Sec. 2270, R.C.M. 1935; amd. Sec. 85, Ch. 405, L. 1973; R.C.M. 1947, 84-4503; amd. Sec. 5, Ch. 501, L. 1981; amd. Sec. 2, Ch. 811, L. 1991.

15-1-404. Other remedies superseded. The remedies hereby provided shall supersede the remedy of injunction and all other remedies which might be invoked to prevent the collection of taxes or licenses alleged to be irregularly levied or demanded, except in unusual cases where the remedies hereby provided are deemed by the court to be inadequate.

History: En. Sec. 4026, Pol. C. 1895; re-en. Sec. 2745, Rev. C. 1907; re-en. Sec. 2272, R.C.M. 1921; re-en. Sec. 2272, R.C.M. 1935; R.C.M. 1947, 84-4504; amd. Sec. 7, Ch. 463, L. 1981.

15-1-405. Injunction not to be used to restrain enforcement of tax. No injunction must be granted by any court or judge to restrain the collection of any tax or any part thereof or to restrain the sale of any property for the nonpayment of taxes except:

(1) where the tax or the part thereof sought to be enjoined is illegal or is not authorized by law. If the payment of a part of a tax is sought to be enjoined, the other part must be paid before an action can be commenced.

(2) where the property is exempt from taxation.

History: En. Sec. 204, p. 128, L. 1891; re-en. Sec. 4023, Pol. C. 1895; re-en. Sec. 2741, Rev. C. 1907; re-en. Sec. 2268, R.C.M. 1921; re-en. Sec. 2268, R.C.M. 1935; R.C.M. 1947, 84-4505.

15-1-406. Declaratory judgment. (1) An aggrieved taxpayer may bring a declaratory judgment action in the district court seeking a declaration that:

(a) an administrative rule or method or procedure of assessment or imposition of tax adopted or used by the department of revenue is illegal or improper; or

(b) a tax authorized by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform tax review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision. The court shall consolidate all actions brought under subsection (1) that challenge the same tax. The decision of the court applies to all similarly situated taxpayers except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid when due as a condition of continuing the action. Property taxes may be paid under protest as provided in 15-1-402.

(4) The remedy authorized by this section may not be used to challenge the:

(a) market value of property under a property tax unless the challenge is to the legality of a particular methodology that is being applied to similarly situated taxpayers; or

(b) legality of a tax other than a property tax, inheritance tax, or estate tax unless the review pursuant to 15-1-211 has been completed.

(5) The remedy authorized by this section is the exclusive method of obtaining a declaratory judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this section supersedes the Uniform Declaratory Judgments Act established in Title 27, chapter 8. This section does not affect actions for declaratory judgments under 2-4-506.

History: En. Secs. 1, 4, Ch. 463, L. 1981; amd. Sec. 3, Ch. 811, L. 1991; amd. Sec. 1, Ch. 21, L. 1993; amd. Sec. 2, Ch. 594, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 21 at end of first sentence of (2) substituted "date the notice of the tax due was sent to the taxpayer" for "imposition of the tax"; and made minor changes in style.

Chapter 594 near beginning of (1), after "taxpayer may", deleted "in lieu of proceeding under 15-1-402 or 15-1-211"; inserted (1)(a) regarding action pertaining to alleged illegal or improper tax; at beginning of (1)(b) substituted "authorized" for "levied"; at end of first sentence of (2) substituted "date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform tax review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision" for "imposition of the tax"; inserted second sentence of (3) that read: "Property taxes may be paid under protest as provided in 15-1-402"; inserted (4) establishing exceptions to challenges for market value and the legality of certain taxes; inserted (5) clarifying that the remedy in this section is exclusive; and made minor changes in style.

15-1-407. Alternative remedy — procedure. (1) Except as provided in subsection (2), an action pursuant to 15-1-406 is subject to the provisions of Title 27, chapter 8.

(2) In lieu of the requirement of 27-8-301, a party bringing an action under 15-1-406 may elect to use:

(a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action, Title 25, chapter 20, rule 23; or

(b) the procedure provided for in subsection (3).

(3) (a) A party bringing an action under 15-1-406 may elect to give notice as provided in this subsection. A party so electing must publish notice that an action has been brought. The notice must be published at least once each

week for 4 consecutive weeks in a newspaper of general circulation published in the county where the action is commenced and in other counties within the jurisdiction of the taxing authority. The notice shall advise each similarly situated taxpayer that:

(i) the court will exclude him from the class if he so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all similarly situated taxpayers who do not request to be excluded; and

(iii) any similarly situated taxpayer who does not request exclusion may, if he desires, enter an appearance.

(b) The court shall exclude a taxpayer from an action brought pursuant to 15-1-406 if the person bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests to be excluded by the date specified in the notice.

(c) An election to give notice under subsection (3) of this section does not prevent any party to the action from serving process on other interested parties.

(4) In a proceeding under 15-1-406 all issues shall be tried by the court.

History: En. Sec. 2, Ch. 463, L. 1981.

15-1-408. Alternative remedy — judgment. If the district court determines that the tax was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax, the judgment may direct:

(1) that the revenue collected under the illegal tax be directly refunded to the taxpayers who have paid the illegal tax and who have not been excluded from the action;

(2) that the revenue collected under the illegal tax be used to reduce a similar levy in the ensuing tax year;

(3) that the assessment be changed for the taxpayer or taxpayers who brought the action as well as for all similarly situated taxpayers; or

(4) any other remedy as the court considers appropriate.

History: En. Sec. 3, Ch. 463, L. 1981; amd. Sec. 3, Ch. 594, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 594 inserted (3) providing that a judgment may direct an assessment to be changed for the taxpayer who brought the action and for all similarly situated taxpayers as well; and made minor changes in style.

15-1-409 through 15-1-420 reserved.

15-1-421. Payment of taxes by negotiable instrument. The department of revenue is not bound by a special, qualified, conditional, or restrictive endorsement placed on a negotiable instrument by the maker or drawer, tendered to the department for the payment of a tax liability, unless:

(1) the taxpayer and the department have previously entered into a written agreement that specifies the amount of the taxpayer's liability; and

(2) the amount tendered is in accordance with the written agreement.

History: En. Sec. 1, Ch. 17, L. 1989.

Cross-References

U.C.C. — restrictive endorsements, 30-3-205.

Part 5
Disposition of Tax Proceeds

Part Cross-References

Tax purposes, Art. VIII, sec. 1, Mont. Const.

15-1-501. *(Temporary)* **Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (6) all money received from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 59.5% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 31.8% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 61% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(4) The department of revenue shall also deposit to the credit of the state general fund all money received from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.

(6) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as

prescribed by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally accepted accounting principles.

(7) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.

15-1-501. *(Effective July 1, 1994)* **Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (6) all money received from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 91.3% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 89.5% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(4) The department of revenue shall also deposit to the credit of the state general fund all money received from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.

(6) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally accepted accounting principles.

(7) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.

History: En. Sec. 1, Ch. 14, L. 1941; amd. Sec. 51, Ch. 147, L. 1963; amd. Sec. 6, Ch. 276, L. 1965; amd. Sec. 51, Ch. 100, L. 1973; amd. Sec. 1, Ch. 300, L. 1975; R.C.M. 1947, 84-1901(part); amd. Sec. 9, Ch. 634, L. 1979; amd. Sec. 2, Ch. 700, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 619, L. 1983; amd. Sec. 1, Ch. 707, L. 1983; amd. Sec. 4, Ch. 277, L. 1985; amd. Sec. 2, Ch. 611, L. 1987; amd. Sec. 1, Ch. 666, L. 1987; amd. Sec. 64, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 626, L. 1991; amd. Secs. 47, 55, Ch. 767, L. 1991; amd. Sec. 1, Ch. 455, L. 1993; amd. Sec. 7, Ch. 593, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 455 in (1), (2), and (3) inserted "in accordance with the provisions of subsection (6)"; at beginning of (4) substituted "department of revenue" for "state treasurer"; inserted (6) requiring that tax distributions be made according to the law in effect when the tax revenue was recorded for accounting purposes; and in (7), in two places, substituted "currently being recorded" for "deposited". Amendment effective April 21, 1993.

Chapter 593 at beginning of (2)(a) substituted "91.3%" for "59.5%"; deleted former (2)(c) that read: "31.8% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343"; at beginning of (3)(a) substituted "89.5%" for "61%"; deleted former (3)(c) that read: "28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343"; and made minor changes in style. Amendment effective July 1, 1994.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Cross-References

Disposition of corporate license tax collected from banks and savings and loan associations, 15-31-702.

Disposition of coal severance taxes, 15-35-108.

Disposition of oil and gas severance taxes, 15-36-112.

Disposition of resource indemnity trust tax, 15-38-106.

Disposition of cement producer's and dealer's tax, 15-59-108, 15-59-208.

Disposition of gasoline tax, 15-70-101.

Disposition of license tax on vehicles propelled by liquefied petroleum gas, 15-71-104.

Montana Alcoholic Beverage Code, Title 16, ch. 1 through 4 and ch. 6.

General fund, 17-2-102.

Taxing power pledged for payment of long-range building program bonds, 17-5-402.

Percentage of income and corporation license taxes pledged for payment of long-range building program bonds, 17-5-407.

Percentage of income and corporation license taxes appropriated to debt service account, 17-5-408.

Taxing power pledged for payment of general obligation highway bonds, 17-5-501.

Taxing power pledged for payment of rent incurred in lease of buildings, 18-3-101.

State equalization aid to public schools, 20-9-343.

Disposition of public contractor's fees, 37-71-105.

Disposition of tax and fees in lieu of tax on vehicles, 61-3-509.

Taxing power not pledged for payment of housing bonds, 90-6-123.

15-1-502. Repealed. Sec. 34, Ch. 455, L. 1993.

History: En. Sec. 1, Ch. 126, L. 1963; amd. Sec. 14, Ch. 516, L. 1973; R.C.M. 1947, 84-725.

15-1-503. Refund of overpayment — procedure. (1) When there has been an overpayment of the inheritance tax collected by county treasurers or any other tax collected by the department of revenue and there is no law providing for a refund, the department shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) of this section.

(2) No refund or payment shall be allowed unless a claim is filed by the taxpayer before the expiration of 5 years from the time the tax was paid. Within 6 months after the claim is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit

or refund shall be made to the taxpayer within 60 days after the claim is approved; if the claim is disallowed, the department shall so notify the taxpayer and shall grant a hearing on the claim. If the department disapproves a claim after holding a hearing, the determination of the department may be reviewed as provided by 15-30-148.

History: En. Sec. 2, Ch. 126, L. 1963; amd. Sec. 15, Ch. 516, L. 1973; R.C.M. 1947, 84-726.

Cross-References

Applicable to refund of tax on tobacco products other than cigarettes, 16-11-206.

Inheritance tax, Title 72, ch. 16.

15-1-504. Settlement of county treasurer with state treasurer. (1) Except as provided in subsection (2), the county treasurer, between the 1st and 20th days of each month, shall remit to the state treasurer all money belonging to the state that was collected by the county treasurer during the preceding month. The remittance must be accompanied by a detailed report upon a form that the state treasurer prescribes. The state treasurer may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section.

(2) By June 20 of each year, the county treasurer shall remit to the state treasurer an estimate of all money belonging to the state that was collected by the county treasurer by June 15, in addition to the amount collected during the preceding month. In July, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of June.

History: En. Sec. 3990, Pol. C. 1895; re-en. Sec. 2715, Rev. C. 1907; re-en. Sec. 2255, R.C.M. 1921; Cal. Pol. C. Sec. 3865; amd. Sec. 1, Ch. 47, L. 1925; re-en. Sec. 2255, R.C.M. 1935; R.C.M. 1947, 84-4401; amd. Sec. 1, Ch. 72, L. 1991; amd. Sec. 1, Ch. 4, Sp. L. July 1992; amd. Sec. 1, Ch. 102, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 102 in (2), near beginning after "state treasurer", inserted "an estimate of"; deleted former (3) that read: "(3) By December 20 of each year, the county treasurer shall remit to the state treasurer all money belonging to the state that was collected by the county treasurer by December 15, in addition to the amount collected during the preceding month. In January, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of December"; and made minor changes in style. Amendment effective March 17, 1993.

15-1-505. Repealed. Sec. 36, Ch. 451, L. 1993.

History: En. Sec. 3992, Pol. C. 1895; re-en. Sec. 2717, Rev. C. 1907; re-en. Sec. 2257, R.C.M. 1921; Cal. Pol. C. Sec. 3868; amd. Sec. 2, Ch. 47, L. 1925; re-en. Sec. 2257, R.C.M. 1935; R.C.M. 1947, 84-4402.

15-1-506. Annual settlements with county clerk. The department of revenue, county attorney, and county treasurer must annually, on the first Monday of January, make a settlement with the county clerk and recorder of all transactions connected with the revenue for the previous year, and every county treasurer, on the expiration of his office, must make such settlement.

History: En. Sec. 199, p. 128, L. 1891; re-en. Sec. 4016, Pol. C. 1895; re-en. Sec. 2734, Rev. C. 1907; re-en. Sec. 2042, R.C.M. 1921; re-en. Sec. 2042, R.C.M. 1935; amd. Sec. 21, Ch. 405, L. 1973; R.C.M. 1947, 84-448.

15-1-507 through 15-1-515 reserved.

15-1-516. Terminated. Section 39(2), Ch. 15, Sp. L. July 1992.

History: En. Sec. 4, Ch. 15, Sp. L. July 1992.

Part 6
Multistate Tax Compact

Part Cross-References

Advisory Council for Multistate Tax Compact, 2-15-1311.

15-1-601. Compact adopted — text. The Multistate Tax Compact is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as set forth herein below. Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted.

Article I. Purposes

The purposes of this compact are to:

(1) facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;

(2) promote uniformity or compatibility in significant components of tax systems;

(3) facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration;

(4) avoid duplicative taxation.

Article II. Definitions

As used in this compact:

(1) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(2) "subdivision" means any government unit or special district of a state;

(3) "taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state;

(4) "income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions;

(5) "capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety;

(6) "gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax;

(7) "sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller or which is customarily separately stated from the sales price but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles;

(8) "use tax" means a nonrecurring tax, other than a sales tax, which:

(a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property; and

(b) is complementary to a sales tax;

(9) "tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

Article III. Elements Of Income Tax LawsTaxpayer Option, State and Local Taxes

(1) Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form

(2) Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in 5 years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

Coverage

(3) Nothing in this article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division Of Income

(1) As used in this article, unless the context otherwise requires:

(a) "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

(b) "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

(c) "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(d) "financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company;

(e) "nonbusiness income" means all income other than business income;

(f) "public utility" means any business entity:

(i) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and

(ii) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency;

(g) "sales" means all gross receipts of the taxpayer not allocated under subsections of this article;

(h) "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(i) "this state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

(3) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(a) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (5) through (8) of this article.

(5) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) (a) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is 3.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(14) Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and:

(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) the purchaser is the United States government; or

(ii) the taxpayer is not taxable in the state of the purchaser.

(17) Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(18) If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V. Elements Of Sales And Use Tax LawsTax Credit

(1) Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates — Vendors May Rely

(2) Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The CommissionOrganization and Management

(1) (a) The Multistate Tax Commission is hereby established. It shall be composed of one member from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate, but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subsection (1)(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings and shall provide for the giving of notice of annual, regular, and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees

(2) (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven

members, including the chairman, vice-chairman, treasurer, and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers

(3) In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) study state and local tax systems and particular types of state and local taxes;

(b) develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration;

(c) compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws;

(d) do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance

(4) (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subsection (1)(i) of this article, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subsection (1)(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations And Forms

(1) Whenever any two or more party states or subdivisions of party states have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

(2) Prior to the adoption of any regulation, the commission shall:

(a) as provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings;

(b) afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

(3) The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits

(1) This article shall be in force only in those party states that specifically provide therefor by statute.

(2) Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the

service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

(3) The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident, provided that such state has adopted this article.

(4) The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article, and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.

(5) The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

(6) Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

(7) Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

(8) In no event shall the commission make any charge against a taxpayer for an audit.

(9) As used in this article, "tax", in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration

(1) Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

(2) The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

(3) Whenever a taxpayer who has elected to employ Article IV or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein and agrees to be bound thereby.

(4) The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.

(5) The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

(6) The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

(7) The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.

(8) Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

(9) The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

(10) The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board, the board's written statement of its reasons therefor, the record of the board's proceedings, and any other documents required by the arbitration rules of the commission to be filed.

(11) The commission shall publish the determinations of boards, together with the statements of the reasons therefor.

(12) The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

(13) Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

Article X. Entry Into Force And Withdrawal

(1) This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(3) No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect On Other Laws And Jurisdiction

Nothing in this compact shall be construed to:

(1) affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III, subsection (2), of this compact;

(2) apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII, subsection (9), may apply for the purposes

of that article and the commission's powers of study and recommendation pursuant to Article VI, subsection (3), may apply;

(3) withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body;

(4) supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction And Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 17, L. 1969; amd. Sec. 1, Ch. 249, L. 1973; amd. Sec. 1, Ch. 163, L. 1975; R.C.M. 1947, 84-6701.

15-1-602. Montana compact commissioner — director of revenue. The director of the department of revenue shall represent this state on the multistate tax commission.

History: En. Sec. 2, Ch. 17, L. 1969; amd. Sec. 118, Ch. 405, L. 1973; R.C.M. 1947, 84-6702.

15-1-603. Alternate. The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him.

History: En. Sec. 3, Ch. 17, L. 1969; amd. Sec. 119, Ch. 405, L. 1973; R.C.M. 1947, 84-6703.

15-1-604. Not codified. Committee abolished. Sec. 1, 82A-1806, Ch. 272, L. 1971.

History: En. Sec. 4, Ch. 17, L. 1969; amd. Sec. 27, Ch. 453, L. 1977; R.C.M. 1947, 84-6704.

Part 7

Collection of Delinquent Taxes — Warrant for Distraint

15-1-701. Warrant for distraint. (1) A warrant for distraint is an order, under the official seal of the department of revenue or of the department of transportation, directed to a sheriff of a county of Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delin-

quent taxes and enforce the tax lien in the same manner as a judgment is enforced.

(3) A warrant may be issued for the amount of unpaid tax plus penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant.

History: En. Sec. 1, Ch. 439, L. 1981; amd. Sec. 11, Ch. 512, L. 1991.

15-1-702. Issuance of warrant. (1) If a tax administered and collected by the department is not paid within 30 days of the due date, the department may issue a notice to the taxpayer notifying him that unless payment is received within 30 days of the date of the notice a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under 15-1-703 if the department determines that it is appropriate to utilize 15-1-703.

History: En. Sec. 2, Ch. 439, L. 1981; amd. Sec. 1, Ch. 131, L. 1989.

15-1-703. Emergency issuance of warrant. (1) The department may issue a warrant for distraint without waiting for the expiration of either 30-day period provided for in 15-1-702 if:

(a) the department determines that the collection of the tax is or may be jeopardized because of the delay imposed by the waiting period; or

(b) the tax involved is a tax considered to be held in trust by the taxpayer under state law.

(2) Whenever the provisions of this section are utilized, the department must notify the taxpayer that warrants have been issued.

History: En. Sec. 3, Ch. 439, L. 1981.

15-1-704. Filing with district court. (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

History: En. Sec. 4, Ch. 439, L. 1981.

15-1-705. Review. (1) Except as provided in 15-1-707, a taxpayer has the right to a review of the tax liability pursuant to 15-1-211 prior to execution on a filed warrant for distraint.

(2) The department must provide notice of the right to review to the taxpayer. This notice may be given prior to the notice referred to in 15-1-702. If the taxpayer notified the department that he disagrees with an assessment as provided in 15-1-211, the warrant may not be executed upon until after the review process and any appeals are completed.

History: En. Sec. 5, Ch. 439, L. 1981; amd. Sec. 4, Ch. 811, L. 1991.

15-1-706. Execution upon warrant. (1) Upon receipt of a copy of the filed warrant and notice from the department that the applicable hearing provisions have been complied with, the sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(2) A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in enforcing the warrant.

(3) A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date of the warrant.

(4) If the warrant is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment.

History: En. Sec. 6, Ch. 439, L. 1981.

Cross-References

Execution of judgment, Title 25, ch. 13.

15-1-707. Emergency execution upon warrant. (1) The department may execute upon a filed warrant for distraint without providing an opportunity for a hearing prior to execution if the department determines that the collection of the tax is jeopardized because of the delay imposed by the hearing requirement.

(2) When the provisions of this section are utilized, the department must notify the taxpayer and inform the taxpayer that he has a right to request a hearing to be held subsequent to execution. A hearing, if desired, must be requested in writing within 30 days of the date of the notice and, if requested, must be held as soon as possible. The commencement of a proceeding under 15-1-705 does not preclude the use of the provisions of this section if the department determines that such action is appropriate.

History: En. Sec. 7, Ch. 439, L. 1981.

15-1-708. Release of lien. (1) Upon payment in full of the unpaid tax plus penalty, if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that a release or partial release of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

History: En. Sec. 8, Ch. 439, L. 1981.

15-1-709. Remedy not exclusive. The use of the warrant for distraint provided for in 15-1-701 through 15-1-708 is not exclusive, and the department may use any other remedy provided by law for the collection of tax debts.

History: En. Sec. 9, Ch. 439, L. 1981.

Part 8

Payment of Taxes By Electronic Funds Transfer

15-1-801. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer

or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(3) "Taxes" means the taxes provided for in this title.

History: **En. Sec. 1, Ch. 96, L. 1985.**

15-1-802. Taxes to be paid by electronic funds transfer — limitation. All taxes due the state must be paid by electronic funds transfer whenever the amount due is $500,000 or greater. Whenever the payment of taxes is required to be made by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment may be made on the first business day thereafter.

History: **En. Sec. 2, Ch. 96, L. 1985.**

15-1-803. Rules. The department shall adopt rules necessary to implement this part, including but not limited to rules:

(1) coordinating the filing of tax returns with the payment of taxes by electronic funds transfer; and

(2) specifying the form and content of electronic funds transfer messages in order to ensure the proper receipt and crediting of the tax payment.

History: **En. Sec. 3, Ch. 96, L. 1985.**

CHAPTER 2

STATE TAX APPEAL BOARD

Part 1 — Composition and Organization

15-2-101. State tax appeal board — appointment of members — term of office.
15-2-102. Qualification and compensation.
15-2-103. Organization, quorum, sessions.
15-2-104. Employees — expenses — minutes — rules.
15-2-105. Office, furnishings, and supplies.
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Part 2 — Powers and Duties

15-2-201. Powers and duties.

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15-2-301. Appeal of county tax appeal board decisions.
15-2-302. Direct appeal from department decision to state tax appeal board — hearing.
15-2-303. Judicial review.
15-2-304. Petition for interlocutory adjudication.
15-2-305. Jurisdiction to make interlocutory adjudication.
15-2-306. Board may order refund.
15-2-307 through 15-2-310. Repealed.

Chapter Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Creation of State Tax Appeal Board, 2-15-1015.

"State Board" or "Board" defined as State Tax Appeal Board, 15-1-101.

County Tax Appeal Board, Title 15, ch. 15, part 1.

Part 1

Composition and Organization

15-2-101. State tax appeal board — appointment of members — term of office. On July 1, 1973, there shall be created a state tax appeal board which shall be composed of three members to be appointed by the governor for staggered terms by and with the advice and consent of the senate; provided, however, a member so appointed may serve until the next regular session of the legislature without such advice and consent. Each succeeding member shall hold his office for a term of 6 years and until his successor shall be appointed and shall have qualified. Any vacancy shall be filled by the governor subject to confirmation by the senate during the next legislative session. Succeeding appointments, except when made to fill a vacancy, shall be made on or before January 31 during the session of the legislature next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 1, Ch. 3, L. 1923; re-en. Sec. 2122.1, R.C.M. 1935; amd. Sec. 50, Ch. 100, L. 1973; amd. Sec. 45, Ch. 405, L. 1973; R.C.M. 1947, 84-701.

15-2-102. Qualification and compensation. (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other office under the laws of this state or any other state or any office under the government of the United States or under the government of any other state. He shall devote his entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) The member designated chairman as provided for in 15-2-103 shall receive a salary equivalent to that of an entry grade 17 salary, plus 5%. The remaining state tax appeal board members shall be paid a salary equivalent to that of an entry grade 17 salary. All members of the board shall receive travel expenses as provided for in 2-18-501 through 2-18-503, as amended, when away from the capital on official business.

History: En. Sec. 2, Ch. 3, L. 1923; re-en. Sec. 2122.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1953; amd. Sec. 8, Ch. 225, L. 1963; amd. Sec. 13, Ch. 237, L. 1967; amd. Sec. 46, Ch. 405, L. 1973; amd. Sec. 26, Ch. 453, L. 1977; R.C.M. 1947, 84-702; amd. Sec. 1, Ch. 620, L. 1979; amd. Sec. 5, Ch. 605, L. 1981; amd. Sec. 4, Ch. 656, L. 1983; amd. Sec. 2, Ch. 236, L. 1985; amd. Sec. 5, Ch. 693, L. 1985; amd. Sec. 13, Ch. 660, L. 1989; amd. Sec. 15, Ch. 720, L. 1991.

15-2-103. Organization, quorum, sessions. The members of the state tax appeal board shall, without delay, meet at the state capital, and the governor shall designate one of their members as chairman. A majority of said board shall constitute a quorum. It shall be in continuous session and open for the transaction of business every day except Saturdays, Sundays, and legal holidays; and the sessions of said board shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capital when deemed necessary to facilitate the performance of its duties or to accommodate parties in interest.

History: En. Sec. 3, L. 1923; re-en. Sec. 2122.3, R.C.M. 1935; amd. Sec. 47, Ch. 405, L. 1973; R.C.M. 1947, 84-703.

15-2-104. Employees — expenses — minutes — rules. The state tax appeal board may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers as may be necessary to perform the duties that may be required of it. The total expenses of such board shall not exceed, in the aggregate during any fiscal year, the amount appropriated for the board for all purposes by the legislature for such year. The secretary shall keep full and correct minutes of the transactions and proceedings of said board, shall have authority to administer oaths and perform such other duties as may be required of him. The board may make all needful rules for the orderly and methodical performance of its duties as a tax appeal board and for conducting hearings and other proceedings before it.

History: En. Sec. 5, Ch. 3, L. 1923; re-en. Sec. 2122.5, R.C.M. 1935; amd. Sec. 1, Ch. 82, L. 1947; amd. Sec. 49, Ch. 405, L. 1973; R.C.M. 1947, 84-705.

15-2-105. Office, furnishings, and supplies. The board shall keep its office at the capital and shall be provided with suitable and necessary offices and office furniture, printing, supplies, stationery, books, periodicals, and financial and commercial reports.

History: En. Sec. 6, Ch. 3, L. 1923; re-en. Sec. 2122.6, R.C.M. 1935; amd. Sec. 50, Ch. 405, L. 1973; R.C.M. 1947, 84-706.

15-2-106. Seal. The state tax appeal board shall have a seal and such seal shall have the following words engraved thereon, "Tax Appeal Board of the State of Montana". The board shall authenticate all of its orders, records, and proceedings with such seal, and the courts of this state shall take judicial notice of such seal.

History: En. Sec. 17, Ch. 3, L. 1923; re-en. Sec. 2122.17, R.C.M. 1935; amd. Sec. 60, Ch. 405, L. 1973; R.C.M. 1947, 84-717.

Part 2

Powers and Duties

15-2-201. Powers and duties. (1) It shall be the duty of the state tax appeal board to:

(a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties and for this purpose may schedule meetings of county tax appeal boards, and it shall be the duty of all invited county tax appeal board members to attend if possible, and the cost of their attendance shall be paid from the appropriation of the state tax appeal board;

(b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided for in 15-15-101(2) to hear an appeal.

(c) hear appeals from decisions of the county tax appeal boards;

(d) hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, and penalties.

(2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or his agent. In case any witness shall fail to obey any summons to appear before said board or shall refuse to testify or answer any material questions or to produce records, books, papers, or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter under consideration by the board shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the board.

(3) The state tax appeal board shall also have the duties of an appeal board relating to such other matters as may be provided by law.

History: En. Sec. 8, Ch. 3, L. 1923; re-en. Sec. 2122.8, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1957; amd. Sec. 1, Ch. 227, L. 1963; amd. Sec. 1, Ch. 211, L. 1971; amd. Sec. 52(a), Ch. 405, L. 1973; amd. Sec. 3, Ch. 38, L. 1974; R.C.M. 1947, 84-708; amd. Sec. 1, Ch. 502, L. 1981.

Cross-References

Witness fees in courts of record, 26-2-501.

Perjury, 45-7-201.

Part 3

Appeal Procedure

Part Cross-References

Department to defend property tax appeals, 15-8-115.

Appeal of dangerous drug tax assessment, 15-25-114.

15-2-301. Appeal of county tax appeal board decisions. (1) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. Any person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax appeal board. The state board shall set the appeal for hearing either in its office in the capital or the county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest. The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of the hearing.

(2) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal

to one of its members or to a designated hearing officer. The board member or hearing officer may exercise all the powers of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together with a transcript or a tape recording of the hearing, to the board. The state board shall determine the appeal on the record.

(3) On all hearings at county seats throughout the state, the state board or the member or hearing officer designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received. The cost of taking and transcribing testimony may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.

History: En. Sec. 9, Ch. 3, L. 1923; re-en. Sec. 2122.9, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974; amd. Sec. 1, Ch. 155, L. 1977; amd. Sec. 1, Ch. 249, L. 1977; R.C.M. 1947, 84-709; amd. Sec. 1, Ch. 611, L. 1979; amd. Secs. 1, 2, Ch. 471, L. 1987; amd. Sec. 1, Ch. 247, L. 1991; amd. Sec. 4, Ch. 594, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 594 deleted former second sentence of (4) that read: "The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review"; and inserted (5) clarifying finality of State Tax Appeal Board decisions and proceedings for judicial review.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Appeal of increase of value over owner's statement, 15-1-403.

Appeal by person aggrieved by state debt collection procedure, 17-4-111.

15-2-302. Direct appeal from department decision to state tax appeal board — hearing. (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

(a) property centrally assessed under chapter 23 of this title;

(b) classification of property as new industrial property;

(c) any other tax (other than the property tax) imposed under this title; or

(d) any other matter in which the appeal is provided by law.

(2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision. The complaint must set forth the grounds for relief and nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(3) The department shall file with the board an answer within 30 days following filing of a complaint and at that time mail a copy to the complainant.

The answer must set forth the department's response to each ground for and type of relief demanded in the complaint.

(4) The board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.

History: En. 84-709.4 by Sec. 2, Ch. 155, L. 1977; R.C.M. 1947, 84-709.4; amd. Sec. 1, Ch. 59, L. 1993; amd. Sec. 5, Ch. 594, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 59 near beginning of (1) substituted "a final decision" for "any action"; in (2), at end of first sentence, substituted "department's final decision" for "department action"; in (4) substituted "conduct the appeal" for "hear the parties"; and made minor changes in style. Amendment effective February 19, 1993.

Chapter 594 near beginning of (1), before "action", inserted "final"; inserted (5) clarifying finality of State Tax Appeal Board decisions and proceedings for judicial review; and made minor changes in style.

Applicability: Section 2, Ch. 59, L. 1993, provided: "[This act] applies to final decisions made on or after [the effective date of this act]." Effective February 19, 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Appeal of penalty assessment for failure to furnish information to Department, 15-1-303.

New industrial property classification, 15-6-135, 15-6-152.

County Tax Appeal Board, Title 15, ch. 15, part 1.

Appeal of action of Department on application for revision of income tax, 15-30-147.

Appeal of action of Department on application for revision of corporation license or income tax, 15-31-532.

Appeal of determination of metalliferous mines license tax, 15-37-110.

Appeal of determination relating to gasoline and vehicle fuels taxes, 15-70-111.

Appeal of decision of Department on unclaimed property, 70-9-311.

15-2-303. Judicial review. (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision is entitled to judicial review under this part.

(2) Proceedings for review must be instituted by filing a petition in district court in the county in which the taxable property or some portion of it is located, except the taxpayer has the option to file in the district court of the first judicial district. A petition for judicial review must be filed within 60 days after service of the final decision of the state tax appeal board or, if a rehearing is requested, within 60 days after service of the final decision. Copies of the petition must be promptly served on all parties of record. The department of revenue shall promptly notify the state tax appeal board, in writing, of any judicial review, but failure to do so has no effect on the judicial review. The department of revenue shall, on request, submit to the state tax appeal board a copy of all pleadings and documents.

(3) If the judicial review involves a taxpayer who is seeking a refund of taxes paid under protest, the appealing party shall provide a copy of the petition to the treasurer of the county in which the taxable property or some portion of it is located, but failure to do so has no effect on the judicial review.

(4) Proceedings for review of a decision by the state tax appeal board by a company under the jurisdiction of the public service commission must be instituted in the district court of the first judicial district.

(5) Notwithstanding the provisions of 2-4-704(1), the court may, for good cause shown, permit additional evidence to be introduced.

History: En. 84-708.1 by Sec. 52(b), Ch. 405, L. 1973; amd. Sec. 2, Ch. 277, L. 1974; amd. Sec. 1, Ch. 346; amd. Sec. 1, Ch. 404, L. 1975; R.C.M. 1947, 84-709.1; amd. Sec. 1, Ch. 77, L. 1981; amd. Sec. 6, Ch. 501, L. 1981; amd. Sec. 6, Ch. 594, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 594 in (1), after "decision", deleted "in a contested case"; in (2), after "district", deleted "and serving a copy of the petition on the department of revenue or taxpayer", at beginning of second sentence inserted "A petition for judicial review must be filed" and at end substituted "service of the final decision" for "the decision thereon", and inserted third sentence requiring service of petition copies on parties of record; inserted (3) requiring service of a petition copy on the County Treasurer of the county in which taxable property of a taxpayer seeking refund under protest is located; and made minor changes in style.

Cross-References

Review of decision relating to gasoline and vehicle fuels taxes, 15-70-111.

Costs allowed in action involving legality of any tax, 25-10-101, 25-10-102.

Public Service Commission jurisdiction, 69-1-102.

Appeal of decision of Board on unclaimed property, 70-9-312.

15-2-304. Petition for interlocutory adjudication. (1) (a) Either party, within 30 days of the filing of an answer to an appeal before the state tax appeal board, may file a petition for an interlocutory adjudication under 15-2-305. The petition may be filed with the district court:

(i) in the first judicial district;

(ii) in the county in which the taxable property is located; or

(iii) in cases not involving property taxes, in the county where the taxpayer resides or has his principal place of business in the state.

(b) The petition may raise any question involving procedure, the admissibility of evidence, or a substantive question of law raised by the pleadings within 30 days of filing an answer to the appeal with the state tax appeal board.

(c) A nonpetitioning party shall respond to the petition within 30 days after service of the petition. The response may raise any question not raised in the petition involving procedure, the admissibility of evidence, or a substantive question of law.

(2) After the 30-day period specified in subsection (1)(b) but before arguments have been heard, the parties to the proceeding may jointly petition a district court to make an interlocutory adjudication as provided under 15-2-305. A petition for an adjudication must be signed by each party to the proceeding.

(3) In a petition under subsection (1) or (2), one party must be designated as the petitioner and every other party must be designated a respondent. The court may in its discretion grant a petition if it appears that the issues presented involve procedure, the admissibility of evidence, or a substantive question of law and do not require the determination of questions of fact and that the controversy would be more expeditiously resolved by an adjudication. If the court grants a petition, it shall rule on all issues presented in the petition and the response, regardless of whether a ruling on less than all of the issues is dispositive of the case.

History: En. 84-709.2 by Sec. 2, Ch. 404, L. 1975; R.C.M. 1947, 84-709.2(part); amd. Sec. 1, Ch. 506, L. 1987; amd. Sec. 1, Ch. 620, L. 1991.

15-2-305. Jurisdiction to make interlocutory adjudication. A district court may make an interlocutory adjudication of an issue pending before the state tax appeal board if that issue involves procedure, the admissibility of evidence, or a substantive question of law and does not require the determination of a question of fact. If the petition is granted, the district court shall rule on all issues presented in the petition and the response, regardless of whether a ruling on less than all of the issues is dispositive of the case. Appeals from the ruling of the court may be appealed as in other civil actions.

History: En. 84-709.3 by Sec. 3, Ch. 404, L. 1975; R.C.M. 1947, 84-709.3(part); amd. Sec. 2, Ch. 620, L. 1991.

Cross-References

Civil appeals, Title 25, ch. 21.

15-2-306. Board may order refund. (1) In any appeal before the state tax appeal board when a taxpayer has paid property taxes or fees under written protest and the taxes or fees are held by the treasurer of a unit of local government in a protest fund, the state tax appeal board shall enter judgment, exclusive of costs, if the board finds that the property taxes or fees should be refunded.

(2) The state tax appeal board's judgment issued pursuant to subsection (1) must be held in abeyance:

(a) until the time period for appeal has passed; or

(b) if the final decision of the state tax appeal board has been appealed in accordance with 15-2-303.

History: En. Sec. 2, Ch. 501, L. 1981; amd. Sec. 7, Ch. 594, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 594 in three places in (1) substituted reference to property tax or fee for reference to tax or license fee; in (2)(a), after "appeal", deleted "specified in 15-1-402(4)"; and made minor changes in style.

15-2-307 through 15-2-310. Repealed. Sec. 10, Ch. 594, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

15-2-307. En. Sec. 1, Ch. 526, L. 1981.
15-2-308. En. Sec. 2, Ch. 526, L. 1981.
15-2-309. En. Sec. 3, Ch. 526, L. 1981.
15-2-310. En. Sec. 4, Ch. 526, L. 1981.

CHAPTERS 3 THROUGH 5

RESERVED

CHAPTER 6

PROPERTY SUBJECT TO TAXATION

Part 1 — Classification

15-6-101. Property subject to taxation — classification.
15-6-102 through 15-6-121. Repealed.
15-6-122 through 15-6-130 reserved.
15-6-131. Class one property — description — taxable percentage.
15-6-132. Class two property — description — taxable percentage.
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15-6-134. Class four property — description — taxable percentage.
15-6-135. Class five property — description — taxable percentage.
15-6-136. Class six property — description — taxable percentage.
15-6-137. Class seven property — description — taxable percentage.
15-6-138. Class eight property — description — taxable percentage.
15-6-139. Repealed.
15-6-140. Repealed.
15-6-141. Class nine property — description — taxable percentage.
15-6-142. Repealed.
15-6-143. Class ten property — description — taxable percentage.
15-6-144. Repealed.
15-6-145. Class twelve property — description — taxable percentage.
15-6-146. Repealed.
15-6-147. Repealed.
15-6-148. Repealed.
15-6-149. Repealed.
15-6-150. Repealed.
15-6-151. Application for certain class four classifications.
15-6-152. Application for classification as new industrial property.
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15-6-208. Mineral exemptions.
15-6-209. Community services buildings exempt.
15-6-210. Repealed.
15-6-211. Certain disabled or deceased veterans' residences exempt.
15-6-212. Not codified.
15-6-213. Down-hole equipment in oil and gas wells exempt.
15-6-214. Terminated.
15-6-215. Exemption for motion picture and television commercial property.

Chapter Cross-References

Tax purposes, Art. VIII, sec. 1, Mont. Const.

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Reservation of power to tax certain persons and property within land purchased by United States under Art. I, sec. 8, part 17, U.S. Const.; 2-1-202.

Reservation of power to tax certain persons and property within Glacier National Park, 2-1-205.

Reservation of power to tax certain persons and property within land ceded to the United States for Fort Peck Dam, 2-1-209.

Reservation of power to tax certain persons and property purchased for national forest purposes, 2-1-210.

Rights, privileges, and immunities reserved to Indians on assumption of criminal jurisdiction over Flathead Indian Reservation, 2-1-304.

Resort community tax, 7-6-4462.

Suspension of property taxes for persons in military services — application required, 10-1-606.

Taxable value defined, 15-1-101.

Taxation of condominium units, 15-8-511, 15-8-512.

Taxes on banks that have ceased to do business, 32-1-509.

Farm mutual insurers liable for property taxes, 33-4-409.

Real and personal property of insurance guaranty association subject to taxation, 33-10-107.

Real property of life and health insurance guaranty association — subject to taxation, 33-10-208.

Taxation of motor vehicles, Title 61, ch. 3, part 5.

Owner of life estate under duty to pay taxes, 70-16-103.

Covenant to pay taxes or assessments runs with the land, 70-17-203.

Payment of taxes required to prove adverse possession, 70-19-411.

Payment of property taxes on condominiums prior to completion and on filing of declaration, 70-23-205, 70-23-304.

Taxation of property subject to a conservation easement, 76-6-208.

Lessee of state land subject to personal property taxes, 77-6-114.

Part 1
Classification

Part Cross-References

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-6-101. Property subject to taxation — classification. (1) All property in this state is subject to taxation, except as provided otherwise.

(2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with this part.

History: (1)En. Sec. 1667, Comp. Stat. 1887; en. Sec. 1, p. 73, L. 1891; re-en. Sec. 3670, Pol. C. 1895; re-en. Sec. 2498, Rev. C. 1907; re-en. Sec. 1997, R.C.M. 1921; Cal. Pol. C. Sec. 3607; re-en. Sec. 1997, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1977; Sec. 84-201, R.C.M. 1947; (2)En. 84-301.1 by Sec. 1, Ch. 566, L. 1977; Sec. 84-301.1, R.C.M. 1947; R.C.M. 1947, 84-201, 84-301.1; amd. Sec. 13, Ch. 686, L. 1979; amd. Sec. 15, Ch. 693, L. 1979; amd. Sec. 18, Ch. 712, L. 1979; amd. Sec. 2, Ch. 20, L. 1985; amd. Sec. 3, Ch. 681, L. 1985.

Cross-References

Suspension of property taxes for persons in military services, 10-1-606.

Property exempt from taxation, Title 15, ch. 6, part 2.

Extension of classifications under former energy-conservation tax incentive act, 15-32-108.

15-6-102 through 15-6-121. Repealed. Sec. 27, Ch. 693, L. 1979.

15-6-106. Repealed. Sec. 17, Ch. 634, L. 1979.

15-6-121. Repealed. Sec. 30, Ch. 712, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

15-6-102 through 15-6-109. En. 84-301.2 thru 84-301.9 by Secs. 2 thru 9, Ch. 566, L. 1977; R.C.M. 1947, 84-301.2 thru 84-301.9.

15-6-110. En. 84-301.10 by Sec. 10, Ch. 566, L. 1977; amd. Sec. 11, Ch. 566, L. 1977; R.C.M. 1947, 84-301.10.

15-6-111 through 15-6-114. En. 84-301.11 thru 84-301.14 by Secs. 12 thru 15, Ch. 566, L. 1977; R.C.M. 1947, 84-301.11 thru 84-301.14.

15-6-115. En. 84-301.15 by Sec. 16, Ch. 566, L. 1977; amd. Sec. 11, Ch. 566, L. 1977; R.C.M. 1947, 84-301.15.

15-6-116. En. 84-301.16 by Sec. 17, Ch. 566, L. 1977; amd. Sec. 2, Ch. 499, L. 1977; amd. Sec. 8, Ch. 576, L. 1977; R.C.M. 1947, 84-301.16.

15-6-117 through 15-6-119. En. 84-301.17 thru 84-301.19 by Secs. 18 thru 20, Ch. 566, L. 1977; R.C.M. 1947, 84-301.17 thru 84-301.19.

15-6-120. En. Sec. 15, Ch. 498, L. 1977; R.C.M. 1947, 84-310.20.

15-6-121. En. Sec. 3, Ch. 502, L. 1977; R.C.M. 1947, 84-301.21.

15-6-122 through 15-6-130 reserved.

15-6-131. *(Temporary)* **Class one property — description — taxable percentage.** (1) Class one property includes the annual net proceeds of all mines and mining claims except coal, travertine, building stone, and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, for talc, as provided in 15-23-515 or, for vermiculite, as provided in 15-23-516 or, for limestone, as provided in 15-23-517. *(Terminates December 31, 1993—sec. 4, Ch. 700, L. 1991.)*

15-6-131. *(Effective January 1, 1994)* **Class one property — description — taxable percentage.** (1) Class one property includes the annual net proceeds of all mines and mining claims except coal and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, for talc, as provided in 15-23-515 or, for vermiculite, as provided in 15-23-516 or, for limestone, as provided in 15-23-517.

History: En. Sec. 1, Ch. 693, L. 1979; amd. Sec. 1, Ch. 323, L. 1983; amd. Sec. 3, Ch. 531, L. 1989; amd. Sec. 3, Ch. 695, L. 1991; amd. Sec. 1, Ch. 700, L. 1991; amd. Sec. 3, Ch. 506, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 506 in (2), at end, inserted "or, for limestone as provided in 15-23-517". Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

Cross-References

Assessment of property, 15-8-111.

Mines net proceeds tax, Title 15, ch. 23, part 5.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-132. Class two property — description — taxable percentage. (1) Class two property includes the annual gross proceeds of metal mines.

(2) Class two property is taxed at 3% of its annual gross proceeds, as defined in 15-23-801.

History: En. Sec. 2, Ch. 693, L. 1979; amd. Sec. 72, Ch. 11, Sp. L. June 1989.

Cross-References

Coal and metal mines — exemptions, 15-6-208.

Assessment of property, 15-8-111.

Coal gross proceeds tax, Title 15, ch. 23, part 7.

Metal mines gross proceeds tax, Title 15, ch. 23, part 8.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-133. *(Temporary)* **Class three property — description — taxable percentage.** (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(2) Class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

15-6-133. *(Effective July 1, 1994)* **Class three property — description — taxable percentage.** (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1). The land may not be devoted to a commercial or industrial purpose.

(2) Class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

(3) The land described in subsection (1)(c) is valued at the productive capacity value of grazing land, at a production level set by the department, and the taxable value is computed by multiplying the value by seven times the taxable rate for agricultural land.

History: En. Sec. 3, Ch. 693, L. 1979; amd. Sec. 1, Ch. 739, L. 1985; amd. Sec. 3, Ch. 773, L. 1991; amd. Sec. 1, Ch. 267, L. 1993; amd. Sec. 1, Ch. 627, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 267 in (2) substituted "applicable to class four property, as provided in 15-6-134(2)(a)" for ""P" of its productive capacity"; deleted (3) and (4) relating to the taxable percentage rate prior to July 1, 1986, and how it was determined (see 1993 Session Law for text); deleted (5) that provided that after July 1, 1986, no adjustment would be made by the Department to the taxable percentage rate "P" until a revaluation was made; and made minor changes in style. Amendment effective April 2, 1993.

Chapter 627 inserted (1)(c) including as class three property parcels of land of 20 acres or more but less than 160 acres that are not eligible for classification as agricultural land; and inserted (3) establishing a method of valuation of those lands. Amendment effective July 1, 1994.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

Section 5(2), Ch. 627, L. 1993, provided that this section applies to tax years beginning after December 31, 1993.

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.

Definition of "agricultural", 15-1-101.

Assessment of property, 15-8-111.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements, including trailers or mobile homes used as a residence, except those specifically included in another class;

(c) the first $80,000 or less of the market value of any improvement on real property, including trailers or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $10,000 for a single person or $12,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least 9 holes and not less than 3,000 lineal yards; and

(e) all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(2), including 1 acre of real property beneath the agricultural improvements. The 1 acre must be valued at market value.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a), (1)(b), and (1)(e) is taxed at 3.86% of its market value.

(b) (i) Property described in subsection (1)(c) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
$ 0 - $ 1,000	$ 0 - $ 1,200	0%
1,001 - 2,000	1,201 - 2,400	10%
2,001 - 3,000	2,401 - 3,600	20%
3,001 - 4,000	3,601 - 4,800	30%
4,001 - 5,000	4,801 - 6,000	40%
5,001 - 6,000	6,001 - 7,200	50%
6,001 - 7,000	7,201 - 8,400	60%
7,001 - 8,000	8,401 - 9,600	70%

8,001 - 9,000	9,601 - 10,800	80%
9,001 - 10,000	10,801 - 12,000	90%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department of revenue. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1986; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) After July 1, 1986, an adjustment may not be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111.

(4) Within the meaning of comparable property as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property.

History: En. Sec. 4, Ch. 693, L. 1979; amd. Sec. 3, Ch. 638, L. 1979; amd. Sec. 1, Ch. 599, L. 1981; amd. Sec. 59, Ch. 575, L. 1981; amd. Sec. 1, Ch. 564, L. 1981; amd. Sec. 1, Ch. 25, L. 1983; amd. Sec. 2, Ch. 632, L. 1983; amd. Sec. 1, Ch. 292, L. 1985; amd. Sec. 1, Ch. 663, L. 1985; amd. Sec. 2, Ch. 739, L. 1985; amd. Sec. 2, Ch. 743, L. 1985; amd. Sec. 1, Ch. 427, L. 1987; amd. Sec. 1, Ch. 575, L. 1987; amd. Sec. 1, Ch. 612, L. 1991; amd. Sec. 4, Ch. 773, L. 1991; amd. Sec. 6, Ch. 267, L. 1993; amd. Sec. 1, Ch. 562, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 267 inserted (1)(e) concerning improvements on land that is eligible under 15-7-202(2), including 1 acre of real property beneath the agricultural improvements, and requiring that the 1 acre must be valued at market value; in (2)(a) inserted reference to subsection (1)(e); and made minor changes in style. Amendment effective April 2, 1993.

Chapter 562 near middle of first sentence of (1)(c), after "business income", deleted "or loss" and inserted second sentence defining net business income as gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both; and made minor changes in style.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

Section 2, Ch. 562, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

Cross-References

Definitions of "improvements" and "mobile home", 15-1-101.

Application for classification of dwelling under subsection (1)(d), 15-6-151.

Certain disabled veterans' residences exempt, 15-6-211.

Effect of periodic revaluation, 15-7-103.

Assessment of property, 15-8-111.

Taxation of condominiums, 15-8-511, 15-8-512.

New industrial property tax prepayment, 15-16-201.

Reduction of tax on improvements destroyed by natural disaster, 15-16-611.

Payment of tax on mobile homes and housetrailers, Title 15, ch. 24, part 2.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Taxation of property subject to a conservation easement, 76-6-208.

15-6-135. Class five property — description — taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(b) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants, which, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only for as long as substantial compliance continues.

(c) The department of health and environmental sciences shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution equipment. The department of health and environmental sciences shall identify and track compliance in the use of certified air and water pollution equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of health and environmental sciences as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) Class five property is taxed at 3% of its market value.

History: (1), (2)(a), (3) thru (6)En. Sec. 5, Ch. 693, L. 1979; amd. Sec. 4, Ch. 660, L. 1979; (2)(b)En. Sec. 1, Ch. 659, L. 1979; amd. Sec. 60, Ch. 575, L. 1981; amd. Sec. 36, Ch. 370, L. 1987; amd. Sec. 1, Ch. 519, L. 1987; amd. Sec. 1, Ch. 568, L. 1987; amd. Sec. 3, Ch. 659, L. 1987; amd. Sec. 1, Ch. 694, L. 1991; amd. Sec. 1, Ch. 510, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 510 in definition of air and water pollution equipment, in first sentence after "means", inserted "that portion of identifiable property", after "machinery" inserted "devices", after "equipment" substituted "designed, constructed, under construction, or operated for" for "use to reduce or control water or atmospheric pollution or contamination by", after "removing" deleted "reducing, altering", after "disposing" inserted "abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert", and after "storing" substituted "or preventing the creation of air or water pollutants, which, except for the use of the item, would be released to the environment" for "pollutants, contaminants, wastes, or heat", inserted second sentence relating to certificate ineligibility, and deleted last sentence that read: "The department of health and environmental sciences shall determine if such utilization is being made"; inserted (2)(b) relating to requests for certification; inserted (2)(c) relating to required rulemaking; and in (2)(d), in first sentence, substituted "A person may appeal the certification, classification, and valuation of the property to" for "The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or" and at beginning of second sentence substituted "Appeals on the property certification must name the department of health and environmental sciences as the respondent, and appeals on the classification or valuation" for "However, the appraised value", after "equipment" substituted "must name the" for "as determined by the", and after "revenue" substituted "as the respondent" for "may be appealed to the county tax appeal board and the state tax appeal board".

Applicability — Rulemaking: Section 2, Ch. 510, L. 1993, provided: "(1) [This act] applies to tax years beginning after December 31, 1993.

(2) The department of revenue and the department of health and environmental sciences may institute rulemaking under Title 2, chapter 4, prior to October 1, 1993, to implement [this act], but the rules may not be effective prior to October 1, 1993."

Cross-References

Application for classification of property under subsection (1)(c), 15-6-151.

Application for classification as new industrial property, 15-6-152.

Assessment of property, 15-8-111.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

School district may impose additional prerequisites to qualify as new industrial property, 20-9-407.

Payment of taxes on motor vehicles, 61-3-303, 61-3-501.

Sales tax on new motor vehicles — property tax exemption, 61-3-502.

Fee in lieu of tax imposed on motor homes, travel trailers, and campers, 61-3-521.

15-6-136. Class six property — description — taxable percentage. (1) Class six property includes:

(a) livestock and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit;

(b) items of personal property intended for rent or lease in the ordinary course of business, provided each item of personal property satisfies all of the following:

(i) the full and true value of the personal property is less than $5,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis; and

(c) machinery and equipment used in canola seed oil processing facilities if:

(i) the operators of such facilities employ a minimum of 15 full-time employees; and

(ii) a canola seed oil processing facility locates in the state of Montana after July 25, 1989.

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

(3) Class six property is taxed at 4% of its market value.

History: En. Sec. 6, Ch. 693, L. 1979; amd. Sec. 1, Ch. 330, L. 1981; amd. Sec. 5, Ch. 613, L. 1981; amd. Sec. 2, Ch. 599, L. 1983; amd. Sec. 2, Ch. 570, L. 1985; amd. Sec. 1, Ch. 660, L. 1987; amd. Sec. 1, Ch. 598, L. 1989; amd. Sec. 1, Ch. 648, L. 1989; amd. Sec. 2, Ch. 10, Sp. L. June 1989; amd. Sec. 5, Ch. 773, L. 1991.

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.

Definitions of "agricultural" and "poultry", 15-1-101.

Assessment of property, 15-8-111.

Taxation of business inventories, Title 15, ch. 24, part 4.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-137. Class seven property — description — taxable percentage. (1) Class seven property includes:

(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(b) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town;

(c) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile.

(3) Class seven property is taxed at 8% of its market value.

History: En. Sec. 7, Ch. 693, L. 1979; amd. Sec. 2, Ch. 330, L. 1981; amd. Sec. 1, Ch. 352, L. 1981; amd. Sec. 61, Ch. 575, L. 1981; amd. Sec. 1, Ch. 576, L. 1989; amd. Sec. 4, Ch. 10, Sp. L. June 1989.

Cross-References

Assessment of property, 15-8-111.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all trailers and semitrailers, including those prorated under 15-24-102, except those subject to taxation under 61-3-504(2) or exempt under 15-6-201(1)(v);

(e) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class;

(f) buses and trucks having a rated capacity of more than 1 ton, including those prorated under 15-24-102;

(g) truck toppers weighing more than 300 pounds;

(h) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(i) x-ray and medical and dental equipment;

(j) citizens' band radios and mobile telephones;

(k) radio and television broadcasting and transmitting equipment;

(l) cable television systems;

(m) coal and ore haulers;

(n) theater projectors and sound equipment; and

(o) all other property not included in any other class in this part, except that property subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 9% of its market value.

History: En. Sec. 8, Ch. 693, L. 1979; amd. Sec. 62, Ch. 575, L. 1981; amd. Sec. 1, Ch. 278, L. 1983; amd. Sec. 1, Ch. 599, L. 1983; amd. Sec. 4, Ch. 516, L. 1985; amd. Sec. 3, Ch. 743, L. 1985; amd. Sec. 5, Ch. 453, L. 1987; amd. Sec. 1, Ch. 584, L. 1987; amd. Sec. 3, Ch. 611, L. 1987; amd. Sec. 2, Ch. 576, L. 1989; amd. Sec. 2, Ch. 598, L. 1989; amd. Sec. 5, Ch. 10, Sp. L. June 1989; amd. Sec. 1, Ch. 575, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 575 in (1)(d) inserted "and semitrailers" and at end inserted "or exempt under 15-6-201(1)(v)". Amendment effective January 1, 1994.

Cross-References

Assessment of property, 15-8-111.

Prorated taxes on aircraft, 15-24-304.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Fee imposed in lieu of tax on snowmobiles, 23-2-615.1.

Taxation of aircraft, 67-3-201.

15-6-139. Repealed. Sec. 11, Ch. 10, Sp. L. June 1989.

History: En. Sec. 9, Ch. 693, L. 1979; amd. Sec. 63, Ch. 575, L. 1981; amd. Sec. 9, Ch. 614, L. 1981; amd. Sec. 2, Ch. 278, L. 1983; amd. Sec. 3, Ch. 598, L. 1989.

15-6-140. Repealed. Sec. 11, Ch. 10, Sp. L. June 1989.

History: En. Sec. 10, Ch. 693, L. 1979; amd. Sec. 64, Ch. 575, L. 1981; amd. Sec. 10, Ch. 614, L. 1981; amd. Sec. 3, Ch. 278, L. 1983; amd. Sec. 3, Ch. 20, L. 1985; amd. Sec. 2, Ch. 584, L. 1987; amd. Sec. 4, Ch. 611, L. 1987; amd. Sec. 4, Ch. 598, L. 1989.

15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) centrally assessed electric power companies' allocations, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven;

(iv) railroad transportation property included in class twelve; and

(v) airline transportation property included in class twelve.

(2) Class nine property is taxed at 12% of market value.

History: En. Sec. 13, Ch. 686, L. 1979; amd. Sec. 1, Ch. 367, L. 1981; amd. Sec. 2, Ch. 478, L. 1981; amd. Sec. 1, Ch. 722, L. 1985; amd. Sec. 4, Ch. 743, L. 1985; amd. Sec. 3, Ch. 7, Sp. L. March 1986; amd. Sec. 6, Ch. 773, L. 1991.

Cross-References

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

15-6-142. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 4, Ch. 632, L. 1983; amd. Sec. 2, Ch. 663, L. 1985; amd. Sec. 3, Ch. 739, L. 1985; amd. Sec. 2, Ch. 427, L. 1987; amd. Sec. 2, Ch. 575, L. 1987; amd. Sec. 2, Ch. 612, L. 1991.

15-6-143. *(Temporary)* **Class ten property — description — taxable percentage.** (1) Class ten property includes all timberland.

(2) Timberland is contiguous land exceeding 15 acres in one ownership that is capable of producing timber that can be harvested in commercial quantity.

(3) Class ten property is taxed at 4% of the combined appraised value of the standing timber and grazing productivity of the property. *(Terminates January 1, 1994—sec. 19, Ch. 783, L. 1991.)*

15-6-143. *(Effective January 1, 1994)* **Class ten property — description — taxable percentage — alternative classification.** (1) Class ten property includes all forest lands as defined in 15-44-102.

(2) Class ten property is taxed at the percentage rate "P" of its forest productivity value.

(3) For taxable years beginning January 1, 1994, and thereafter, the taxable percentage rate "P" applicable to class ten property is 4%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (4). The taxable percentage rate "P" must be rounded downward to the nearest 0.01% and must be calculated by the department before July 1, 1994.

(4) (a) Prior to July 1, 1994, the department shall determine the certified statewide percentage increase for class ten property using the formula B = X/Y, where:

(i) X is the appraised value, as of January 1, 1994, of all property in the state, excluding use changes occurring during the preceding year, classified under class ten as class ten is described in this section; and

(ii) Y is the appraised value, as of January 1, 1993, of all property in the state that would be classified under class ten as class ten is described in this section as this section reads in 1993.

(b) B must be rounded downward to the nearest 0.0001%.

History: En. Sec. 2, Ch. 681, L. 1985; amd. Sec. 16, Ch. 773, L. 1991; amd. Secs. 6, 7, Ch. 783, L. 1991.

Cross-References

Growing timber not agricultural use, 15-7-202.

15-6-144. Repealed. Sec. 9, Ch. 267, L. 1993.

History: En. Sec. 2, Ch. 699, L. 1985; amd. Sec. 2, Ch. 35, Sp. L. June 1986; amd. Sec. 7, Ch. 773, L. 1991.

15-6-145. Class twelve property — description — taxable percentage. (1) Class twelve property includes all property of a railroad car company as defined in 15-23-211, all railroad transportation property as described in the Railroad Revitalization and Regulatory Reform Act of 1976 as it read on January 1, 1986, and all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986.

(2) For the tax year beginning January 1, 1991, and for each tax year thereafter, class twelve property is taxed at the percentage rate "R", to be determined by the department as provided in subsection (3), or 12%, whichever is less.

(3) R = A/B where:

(a) A is the total statewide taxable value of all commercial property, except class twelve property, as commercial property is described in 15-1-101(1)(d); and

(b) B is the total statewide market value of all commercial property, except class twelve property, as commercial property is described in 15-1-101(1)(d).

(4) (a) For the taxable year beginning January 1, 1986, and for every taxable year thereafter, the department shall conduct a sales assessment ratio study of all commercial and industrial real property and improvements. The study must be based on:

(i) assessments of such property as of January 1 of the year for which the study is being conducted; and

(ii) a statistically valid sample of sales using data from realty transfer certificates filed during the same taxable year or from the immediately preceding taxable year, but only if a sufficient number of certificates is unavailable from the current taxable year to provide a statistically valid sample.

(b) The department shall determine the value-weighted mean sales assessment ratio "M“ for all such property and reduce the taxable value of property described in subsection (4) only, by multiplying the total statewide taxable value of property described in subsection (4)(a) by "M“ prior to calculating "A" in subsection (3)(a).

(c) The adjustment referred to in subsection (4)(b) will be made beginning January 1, 1986, and in each subsequent tax year to equalize the railroad taxable values.

(5) For the purpose of complying with the Railroad Revitalization and Regulatory Reform Act of 1976, as it read on January 1, 1986, the rate "R" referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property, except class twelve property, as commercial property is defined in 15-1-101(1)(d).

History: En. Sec. 5, Ch. 743, L. 1985; amd. Sec. 1, Ch. 7, Sp. L. March 1986; amd. Sec. 1, Ch. 24, Sp. L. June 1986; amd. Sec. 8, Ch. 773, L. 1991; amd. Sec. 1, Ch. 10, Sp. L. July 1992.

Cross-References

Assessment of property, 15-8-111.

Assessment of railroad properties, 15-23-202.

15-6-146. Repealed. Sec. 11, Ch. 10, Sp. L. June 1989.

History: En. Sec. 6, Ch. 743, L. 1985; amd. Sec. 2, Ch. 568, L. 1987; amd. Sec. 8, Ch. 578, L. 1987; amd. Sec. 1, Ch. 649, L. 1987; amd. Sec. 1, Ch. 59, L. 1989.

15-6-147. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 2, Ch. 7, Sp. L. March 1986; amd. Sec. 1, Ch. 19, L. 1989.

15-6-148. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 1, Ch. 34, Sp. L. June 1986.

15-6-149. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 3, Ch. 35, Sp. L. June 1986.

15-6-150. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 1, Ch. 618, L. 1987.

15-6-151. Application for certain class four classifications. (1) A person applying for classification of property described in subsection (1)(c) of 15-6-134 shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(a) his income;

(b) the fact that he maintains the land and improvements as his primary residential dwelling, where applicable; and

(c) such other information as is relevant to the applicant's eligibility.

(2) This application must be made before March 1 of the year after the applicant becomes eligible. The application remains in effect in subsequent years unless there is a change in the applicant's eligibility. The taxpayer shall inform the department of any change in eligibility. The department may inquire by mail whether any change in eligibility has taken place and may require a new statement of eligibility at any time it considers necessary.

(3) The affidavit is sufficient if the applicant signs a statement affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing.

History: En. Sec. 12, Ch. 693, L. 1979; amd. Sec. 1, Ch. 101, L. 1981; amd. Sec. 65, Ch. 575, L. 1981; amd. Sec. 3, Ch. 632, L. 1983; amd. Sec. 3, Ch. 663, L. 1985.

15-6-152. Application for classification as new industrial property. (1) Any person, firm, or other group seeking to qualify its property for classification as new industrial property under class five shall make application to the department of revenue on a form provided by the department.

(2) The department of revenue shall promulgate rules for the determination of what constitutes an adverse impact, taking into consideration the number of people to be employed and the size of the community in which the location of the industrial property is contemplated.

(3) If the department makes an initial determination that the industrial property qualifies as new industrial property under class five, it shall publish notice of and hold a public hearing to determine whether the property should retain this classification.

(4) Local taxing authority officials may waive their objections to the property's classification in class five if the owner of the new industrial property agrees to prepay property taxes on the property during the construc-

tion period. The maximum amount of prepayment shall be the amount of tax the owner would have paid on the property if it had not been classified under class five.

(5) If a new industrial facility qualifies under class five, its property tax payment may not be reduced for reimbursement of its prepaid taxes as provided in 15-16-201 until the class five qualification expires.

History: En. Sec. 13, Ch. 693, L. 1979.

Cross-References

School district may impose additional requirements, 20-9-407.

15-6-153. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 2, Ch. 34, Sp. L. June 1986.

15-6-154. Repealed. Sec. 15, Ch. 773, L. 1991.

History: En. Sec. 4, Ch. 35, Sp. L. June 1986.

15-6-155. Repealed. Secs. 15, 18(2), Ch. 773, L. 1991.

History: En. Sec. 2, Ch. 618, L. 1987; amd. Sec. 9, Ch. 773, L. 1991.

Part 2

Tax-Exempt Property

Part Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Suspension of property tax for persons in military service — application required, 10-1-606.

Injunction to prevent collection of tax on exempt property, 15-1-405.

Assessment of taxable improvements on tax-exempt land, 15-8-701.

Reduction of tax on improvements destroyed by natural disaster, 15-16-611.

Certain natural gas exempt, 15-23-612.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Federal sums in lieu of taxes, Title 17, ch. 3, part 3.

Sales tax on new motor vehicles — property tax exemption, 61-3-502.

Aircraft exempt from nonaircraft- or nonairport-related city tax levies, 67-3-201.

Exemption for property of conservation district, 76-15-404.

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in the buildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization owning and operating facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) beginning January 1, 1994, timber as defined in 15-44-102; and

(v) all trailers and semitrailers with a licensed gross weight of 26,000 pounds or more. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

(2) (a) The term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

History: En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(1), (3), (8); amd. Sec. 1, Ch. 508, L. 1979; amd. Sec. 1, Ch. 616, L. 1979; amd. Sec. 1, Ch. 639, L. 1979; amd. Sec. 21, Ch. 712, L. 1979; amd. Sec. 1, Ch. 478, L. 1981; amd. Sec. 11, Ch. 614, L. 1981; amd. Sec. 1, Ch. 170, L. 1983; amd. Sec. 2, Ch. 323, L. 1983; amd. Sec. 1, Ch. 523, L. 1983; amd. Sec. 2, Ch. 463, L. 1985; amd. Sec. 5, Ch. 516, L. 1985; amd. Sec. 1, Ch. 455, L. 1987; amd. Sec. 1, Ch. 545, L. 1987; amd. Sec. 1, Ch. 556, L. 1987; amd. Sec. 5, Ch. 611, L. 1987; amd. Sec. 2, Ch. 649, L. 1987; amd. Sec. 2, Ch. 59, L. 1989; amd. Sec. 3, Ch. 576, L. 1989; amd. Sec. 1, Ch. 617, L. 1989; amd. Sec. 3, Ch. 713, L. 1989; amd. Sec. 1, Ch. 71, L. 1991; amd. Sec. 1, Ch. 123, L. 1991; amd. Sec. 1, Ch. 271, L. 1991; amd. Sec. 1, Ch. 467, L. 1991; amd. Sec. 9, Ch. 783, L. 1991; amd. Sec. 1, Ch. 54, L. 1993; amd. Sec. 1, Ch. 80, L. 1993; amd. Sec. 2, Ch. 575, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 54 in (1)(a), at beginning, inserted exception clause; in (1)(a)(i), after "owned by", inserted "the federal government or" and at end, after "congress", deleted "to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives)"; and made minor changes in style. Amendment effective February 18, 1993.

Chapter 80 inserted (1)(a)(i)(B) excepting United States property, as provided in 15-24-1103, from exemption from taxation; and made minor changes in style. Amendment effective February 25, 1993.

Chapter 575 inserted (1)(a)(v) relating to rural fire districts and other entities providing fire protection; inserted (1)(v) relating to and defining trailers and semitrailers with a licensed gross weight of 26,000 pounds or more; and made minor changes in style. Amendment effective January 1, 1994.

A style change in (1)(b) was slightly different. The codifier chose the more appropriate of the two.

Effective Date — Retroactive Applicability: Section 2, Ch. 54, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved February 18, 1993.

Effective Date — Applicability: Section 4, Ch. 80, L. 1993, provided: "[This act] is effective on passage and approval and applies to any foreclosures occurring after [the effective date of this act]." Effective February 25, 1993.

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Taxation of state property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 12.

Privilege tax on gainful use of tax-exempt property, 15-24-1204 through 15-24-1206.

Federal sums in lieu of tax, Title 17, ch. 3, part 3.

Exemption of property in certain cities from county library tax, 22-1-313.

Exemption of cemetery association property, 35-20-217.

Exemption of mausoleum and columbarium authorities' property, 35-21-403.

"Motorcycle" defined, 61-1-105.

"Quadricycle" defined, 61-1-133.

Property acquired by municipality for airport purposes exempt, 67-10-406.

Property acquired by airport authority for airport purposes exempt, 67-11-306.

State land equalization payments, Title 77, ch. 1, part 5.

Land purchased from state or irrigation district subject to taxation, 77-2-313.

Reversion of land purchased from state exempt, 77-2-314.

Exemption for irrigation district property, 85-7-2011.

Yellowstone River Compact does not subject United States property to taxation, 85-20-101.

Payments in lieu of taxes to county for land owned by Department of Fish, Wildlife, and Parks, 87-1-603.

Certain industrial development projects not exempt, 90-5-110.

15-6-202. Freeport merchandise and business inventories exemption. (1) Freeport merchandise and business inventories are exempt from taxation.

(2) Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state for storage in transit prior to shipment to a final destination outside the state and which have acquired a taxable situs within the state.

(3) Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged.

(4) Any person or other group seeking to qualify its property for inclusion in the freeport merchandise class shall make application to the department of revenue in such manner or form as may be required by the department.

(5) "Business inventories" includes goods primarily intended for sale and not for lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories do not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock in trade.

History: En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(4); amd. Sec. 2, Ch. 613, L. 1981; amd. Sec. 3, Ch. 599, L. 1983.

15-6-203. Veterans' clubhouse exemption — incompetent veterans' trusts. (1) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States military personnel is used exclusively for educational, fraternal, benevolent, or purely public charitable purposes rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation.

(2) All property, real or personal, in the possession of legal guardians of incompetent veterans of U.S. military service or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensa-

tion, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

History: **En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(2).**

Cross-References

Special considerations allowed service personnel and veterans, Art. II, sec. 35, Mont. Const.

15-6-204. Moneys and credits exemption. (1) Moneys and credits are exempt from taxation.

(2) Moneys and credits are hereby defined for the purpose of taxation as all moneys not constituting moneyed capital as hereinafter defined and all credits secured and unsecured, including all state, county, school district, and other municipal bonds, warrants, and securities, without any deduction or offset; provided, however, that credits as herein defined shall not embrace credits constituting moneyed capital as hereinafter defined or evidence of debt secured by mortgage of record upon real or personal property in the state of Montana.

History: **(1)En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; Sec. 84-202, R.C.M. 1947; (2)En. Sec. 1, Ch. 64, L. 1929; re-en. Sec. 2000.1, R.C.M. 1935; Sec. 84-303, R.C.M. 1947; R.C.M. 1947, 84-202(6), 84-303.**

Cross-References

Definition of "credit", 15-1-101.

Money capital and shares of banks exempt, 15-31-703.

Definition of "school district", 20-15-403.

15-6-205. State water conservation projects exempt. All lands acquired and held by the department of natural resources and conservation or the state of Montana for use in connection with water conservation projects constructed or to be constructed under the laws of this state shall be exempt from taxation, and it shall be the duty of the county treasurer to cancel all taxes remaining unpaid against said land for the year in which same is so acquired and for all previous years, provided that such taxes shall be canceled only in such cases as no tax certificates shall have issued or a tax certificate has issued to the county and no assignment of such certificate of sale has been made by said county prior to the time when said land was acquired by said department.

History: **En. Sec. 1, Ch. 114, L. 1937; R.C.M. 1947, 84-203.**

15-6-206. Irrigation and drainage facilities — when exempt. (1) All irrigation and drainage facilities, including bonds, rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, and other property of like character shall be taxed as like facilities of the federal and state government; in cases where property taxes apply and where an increase in land value results, such facilities shall be taxed as such land is improved and such land shall be classified for tax purposes as the tax classification law provides.

(2) Sprinkler irrigation systems are exempt from taxation. Such systems include all pipes, hoses, rollers, spray attachments, connectors, pumps, and other items integral to the functioning of a sprinkler irrigation system installed and used on a farm or ranch but exclude underground water distribution lines and other elements of the system sufficiently affixed to land that they become real property.

History: (1)En. Sec. 1, Ch. 193, L. 1965; R.C.M. 1947, 84-206; (2)En. Sec. 1, Ch. 695, L. 1979; MCA 1981, 15-6-212(2); redes. 15-6-206(2) by Code Commissioner, 1983.

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.

Exemption for irrigation district property, 85-7-2011.

15-6-207. Agricultural exemptions. (1) The following agricultural products are exempt from taxation:

(a) all unprocessed agricultural products on the farm or in storage and owned by the producer;

(b) all producer-held grain in storage;

(c) all unprocessed agricultural products, except livestock;

(d) except as provided in subsection (1)(e), livestock which have not attained the age of 24 months as of March 1;

(e) swine which have not attained the age of 6 months as of January 1;

(f) poultry and the unprocessed products of poultry; and

(g) bees and the unprocessed product of bees.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if such implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area.

History: En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(5); amd. Sec. 8, Ch. 663, L. 1979; amd. Sec. 3, Ch. 570, L. 1985; amd. Sec. 1, Ch. 627, L. 1985; amd. Sec. 2, Ch. 660, L. 1987; amd. Sec. 5, Ch. 598, L. 1989.

Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.

Definition of "agricultural", 15-1-101.

15-6-208. Mineral exemptions. (1) One-half of the contract sales price of coal sold by a coal producer who extracts less than 50,000 tons of coal in a calendar year is exempt from taxation.

(2) Metal mines producing less than 20,000 tons of ore in a taxable year are exempt from property taxation on one-half of the merchantable value.

(3) New production, as defined in 15-23-601, is exempt from taxation for the first 12 months of production as provided in 15-23-612.

(4) The first 1,000 tons of travertine and building stone extracted from a mine in a tax year are exempt from property taxation.

History: (1)En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; Sec. 84-202, R.C.M. 1947; (2)En. 84-212 by Sec. 6, Ch. 498, L. 1977; Sec. 84-212, R.C.M. 1947; R.C.M. 1947, 84-202(7), 84-212; amd. Sec. 1, Ch. 303, L. 1983; amd. Sec. 7, Ch. 655, L. 1987; amd. Sec. 1, Ch. 89, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 89 inserted (4) exempting from property taxation the first 1,000 tons of travertine and building stone extracted in a tax year; and made minor changes in style.

Applicability: Section 2, Ch. 89, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

Cross-References

Coal severance tax exemption, 15-35-103.

15-6-209. Community services buildings exempt. (1) The building and appurtenant land, not exceeding 1 acre, owned by a nonprofit community service organization is exempt from property taxation, except as provided in subsections (3) and (4), if such organization:

(a) is a lodge of a nationally recognized fraternal organization and does not sell food or beverages under license from the state of Montana;

(b) furnishes services to senior citizens in the form of daytime or evening educational or recreational activities and does not furnish living accommodations to such citizens or sell food or beverages under license from the state of Montana; services qualifying under this provision must be recognized in the state plan on aging adopted by the department of family services; or

(c) primarily furnishes facilities without charge, except that a minimal fee may be charged for janitorial services, for public meetings and entertainments.

(2) An applicant for exemption under this section shall demonstrate that it has been an active community service organization continuously from January 1, 1981.

(3) A building and lot exempted under this section shall be appraised, assessed, and subject to levies for any special improvement district if the special improvement directly benefits the building or lot.

(4) The exemption provided under this section may not be extended to any property owned by a community service organization described herein which is leased in whole or in part to any person for business or profitmaking purposes.

History: **En. 84-202.1 by Sec. 1, Ch. 491, L. 1977; R.C.M. 1947, 84-202.1; amd. Sec. 1, Ch. 423, L. 1981; amd. Sec. 11, Ch. 609, L. 1987.**

15-6-210. Repealed. Sec. 12, Ch. 453, L. 1987.

History: **En Sec. 1, Ch. 229, L. 1979.**

15-6-211. Certain disabled or deceased veterans' residences exempt. (1) A residence, including the lot on which it is built, owned and occupied by a veteran or a veteran's spouse is exempt from property taxation under the following conditions. The veteran must:

(a) have been killed while on active duty or have died as a result of a service-connected disability; or

(b) if living:

(i) have been honorably discharged from active service in any branch of the armed services;

(ii) be rated 100% disabled due to a service-connected disability by the United States department of veterans affairs or its successor; and

(iii) have an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $15,000 for a single person and $18,000 for a married couple.

(2) Property shall continue to be exempt under this section so long as the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran's spouse and the spouse:

(a) is the owner and occupant of the house;

(b) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $15,000;

(c) is unmarried; and

(d) has obtained from the United States department of veterans affairs a letter indicating that the veteran was 100% service-connected disabled at the time of death or that the veteran died while on active duty or as a result of a service-connected disability.

History: **En. Sec. 11, Ch. 693, L. 1979; amd. Sec. 1, Ch. 590, L. 1981; amd. Sec. 1, Ch. 594, L. 1987.**

Cross-References

Special consideration allowed service personnel and veterans, Art. II, sec. 35, Mont. Const.

15-6-212. Not codified. Subsection (1) redundant with 15-6-206(1); (2) redesignated 15-6-206(2).

15-6-213. Down-hole equipment in oil and gas wells exempt. All down-hole equipment in oil and gas wells is exempt from taxation.

History: **En. Sec. 2, Ch. 583, L. 1985.**

Cross-References

Oil and gas machinery and equipment taxed as class eight, 15-6-138.

Right of entry to explore for oil and gas — exemption, 15-6-201.

15-6-214. Terminated. Sec. 3, Ch. 560, L. 1987.

History: **En. Sec. 1, Ch. 560, L. 1987; amd. Sec. 7, Ch. 83, L. 1989.**

15-6-215. Exemption for motion picture and television commercial property. Except as provided in 15-24-305 and 61-3-520, all property, including vehicles, brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from property taxation, provided that the property does not remain in the state for a period in excess of 180 consecutive days in a calendar year.

History: En. Sec. 1, Ch. 525, L. 1989.

Compiler's Comments

Repeal of Termination Date: Section 1, Ch. 55, L. 1993, repealed sec. 11, Ch. 525, L. 1989, which terminated this section effective December 31, 1993. Repealer effective February 18, 1993.

Cross-References

Taxation of motion picture and television commercial property, 15-24-305.

Taxation of vehicles used exclusively in filming motion pictures or television commercials, 61-3-520.

CHAPTER 7

APPRAISAL

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15-7-102. Notice of classification and appraisal to owners — appeals.
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15-7-208. Reclassification by department.
15-7-209. Reclassification by owner — lien.
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15-7-213. Factual details as to agricultural land on assessor's list to be consistent.
15-7-214. Repealed.
15-7-215. Repealed.
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15-7-217 through 15-7-220 reserved.

15-7-221. Phasein of the taxable value of agricultural land.
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15-7-304. Report of transfers — change of ownership records.
15-7-305. Realty transfer certificate required.
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Part 4 — Appraisal of Residential Property in Areas of Changing Use

15-7-401. Purpose.
15-7-402. Application for residential appraisal of certain land and improvements.
15-7-403. Rollback tax — computation.

Chapter Cross-References

Taxation of condominium units, 15-8-511, 15-8-512.

Part 1
General Methods

Part Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-7-101. Classification and appraisal — duties of the department of revenue. (1) It is the duty of the department of revenue to accomplish the following:

(a) the classification of all taxable lands;

(b) the appraisal of all taxable city and town lots;

(c) the appraisal of all taxable rural and urban improvements.

(2) A record thereof must be kept upon such maps, plats, and forms and entered in such books of record as may be prescribed by the department. Such maps, plats, forms, and books of record shall be official records of the state. A certified copy of all such records as may be desired shall be furnished to the department.

(3) It shall be the duty of the department to maintain current the classification of all taxable lands and appraisal of city and town lots and rural and urban improvements, as provided for herein.

History: En. Sec. 1, Ch. 191, L. 1957; amd. Sec. 14, Ch. 405, L. 1973; amd. Sec. 1, Ch. 353, L. 1975; amd. Sec. 1, Ch. 123, L. 1977; R.C.M. 1947, 84-429.7(1).

Cross-References

Classifications of property subject to taxation, Title 15, ch. 6, part 1.

Taxation of property subject to a conservation easement, 76-6-208.

15-7-102. Notice of classification and appraisal to owners — appeals. (1) The department of revenue shall, through its agent as specified in subsection (2), mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) (a) The county assessor shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 15 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the true and correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason

for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 15 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order.

History: En. Sec. 5, Ch. 191, L. 1957; amd. Sec. 17, Ch. 405, L. 1973; R.C.M. 1947, 84-429.11; amd. Sec. 3, Ch. 710, L. 1979; amd. Sec. 1, Ch. 105, L. 1983; amd. Sec. 11, Ch. 526, L. 1983; amd. Sec. 3, Ch. 29, Sp. L. June 1986; amd. Sec. 2, Ch. 613, L. 1987; amd. Sec. 1, Ch. 9, L. 1989; amd. Sec. 1, Ch. 636, L. 1989; amd. Secs. 1, 7, Ch. 680, L. 1991; amd. Sec. 2, Ch. 227, L. 1993; amd. Sec. 8, Ch. 594, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 227 in (1), near beginning, substituted "owner or purchaser" for "owner and purchaser"; in (3), in first sentence, substituted "request and assessment review by submitting an objection in writing to the department" for "submit his objection in writing to the department's agent" and inserted provision that the submission be on forms provided by the Department within 15 days after receipt of the notice of classification and appraisal, inserted second sentence providing that the review be informal and is not subject to contested case procedure, at beginning of third sentence substituted "As a part of the review" for "In an objection to the appraisal of the property" and near end, after "taxpayer", substituted "in support of the taxpayer's opinion as to" for "as evidence of", in fourth sentence, after "place of", substituted "the review" for "hearing and hear any testimony or other evidence that the taxpayer may desire to produce at that time and afford the opportunity to other interested persons to produce evidence at the hearing", and near beginning of fifth sentence substituted "review" for "hearing"; in (4), near beginning, substituted "review" for "hearing"; in (5), at beginning of last sentence, substituted "The department" for "Each county appraiser"; in (6), in first sentence after "department", inserted "after the review provided for in subsection (3)" and before "appeal" inserted "first" and substituted second sentence providing that appeal to county tax appeal board must be filed within 15 days after notice is mailed to the taxpayer for "The property owner may appeal the base valuation and the classificiation determination"; and made minor changes in style. Amendment effective March 30, 1993.

Chapter 594 inserted (2)(b) requiring that a notice must advise the taxpayer that in order to be eligible for a refund, taxes must be paid under protest; and made minor changes in style.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

Cross-References

Notice of reclassification of property as nonagricultural, 15-7-208.

County Assessor as agent of the Department, 15-8-102.

County Tax Appeal Boards to be in session until 60 days after mailing of notices, 15-15-101.

15-7-103. Classification and appraisal — general and uniform methods. (1) It is the duty of the department of revenue to implement the provisions of 15-7-101 through 15-7-103 by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information.

(3) All lands must be classified by parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

(4) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

(5) In any periodic revaluation of taxable property completed under the provisions of 15-7-111 after January 1, 1986, all property classified in 15-6-134 must be appraised on its market value in the same year. The department shall publish a rule specifying the year used in the appraisal.

(6) All sewage disposal systems and domestic use water supply systems of all dwellings may not be appraised, assessed, and taxed separately from the land, house, or other improvements in which they are located. In no event may the sewage disposal or domestic water supply systems be included twice by including them in the valuation and assessing them separately.

History: En. Sec. 6, Ch. 191, L. 1957; amd. Sec. 3, Ch. 512, L. 1973; amd. Sec. 5, Ch. 516, L. 1973; R.C.M. 1947, 84-429.12; amd. Sec. 1, Ch. 710, L. 1979; amd. Sec. 1, Ch. 32, L. 1983; amd. Sec. 4, Ch. 20, L. 1985; (6)En. Sec. 1, Ch. 583, L. 1985; amd. Sec. 3, Ch. 613, L. 1987.

Cross-References

Sewage disposal systems and domestic water supply systems taxed as class four property, 15-6-134.

15-7-104. Work done under prior law. Any and all work performed or caused to be performed by the boards of county commissioners of the various counties for the classification of lands and appraisal of city and town lots and rural and urban improvements under the provisions of Chapter 198, Laws of 1955, is hereby declared to be valid and of the same effect as if performed under the provisions of present law.

History: En. Sec. 7, Ch. 191, L. 1957; R.C.M. 1947, 84-429.13.

15-7-105. Purpose. In order to produce more uniform appraisal of property throughout the state by encouraging technical training in the principles, methods, and techniques of appraising property and promoting a higher level of professionalism among appraisers, the legislature hereby establishes a system of instruction, examination, and certification for all appraisers.

History: En. Sec. 1, Ch. 602, L. 1979.

15-7-106. Courses of instruction, examination, and certification. (1) The department of revenue shall offer courses in the principles, methods, and techniques of appraising for property tax purposes property in three fields:

(a) residential property;

(b) agricultural land; and

(c) commercial and industrial property.

(2) Twice each year the department shall conduct an examination for those who have completed a course of instruction in any of the three fields listed in subsection (1).

(3) The department shall issue a certificate to each appraiser successfully completing a course of instruction and passing an examination in any of these fields.

(4) No person may take the examination for appraising commercial and industrial property unless he holds a certificate in appraising residential property.

History: En. Sec. 2, Ch. 602, L. 1979.

15-7-107. Certification required. (1) Within 1 year after his employment by the department or by July 1, 1980, whichever occurs later, any appraiser employed by the department to appraise:

(a) residential property must obtain a certificate in appraising residential property;

(b) agricultural land must obtain a certificate in appraising agricultural land; and

(c) commercial and industrial property must obtain a certificate in appraising commercial and industrial property.

(2) The department may promulgate rules requiring appraisers to complete continuing education courses in laws, rules, and methods relating to appraisal.

History: En. Sec. 3, Ch. 602, L. 1979.

15-7-108 through 15-7-110 reserved.

15-7-111. Periodic revaluation of taxable property. (1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state. The department shall complete this revaluation program by December 31, 1996. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all property in each county be revalued by December 31, 1996. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county.

(2) Beginning January 1, 1997, the department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state at least every 3 years. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all property in each county be revalued at least every 3 years. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county.

History: En. 84-429.14 by Sec. 1, Ch. 294, L. 1975; R.C.M. 1947, 84-429.14; amd. Sec. 1, Ch. 596, L. 1987; amd. Sec. 4, Ch. 613, L. 1987; amd. Sec. 2, Ch. 636, L. 1989; amd. Secs. 2, 8, Ch. 680, L. 1991; amd. Sec. 4, Ch. 13, Sp. L. July 1992.

Cross-References

Sales Assessment Advisory Board, 7-6-2540.

Revaluation as prerequisite to adjustment of timberland tax formula, 15-6-143.

Reclassification of agricultural land not same as revaluation, 15-7-202.

Effect on market value standard, 15-8-111.

15-7-112. Equalization of valuations. The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.

History: En. 84-429.15 by Sec. 2, Ch. 294, L. 1975; R.C.M. 1947, 84-429.15.

15-7-113. Program exclusive. No program for the revaluation of property shall be implemented for taxation in any county other than as prescribed in 15-7-111 through 15-7-114.

History: En. 84-429.16 by Sec. 3, Ch. 294, L. 1975; R.C.M. 1947, 84-429.16.

15-7-114. Law supplemental. Sections 15-7-111 through 15-7-114 are intended to be supplementary to and are not intended to repeal 15-7-103.

History: En. 84-429.17 by Sec. 4, Ch. 294, L. 1975; R.C.M. 1947, 84-429.17.

15-7-115 through 15-7-120 reserved.

15-7-121. Repealed. Sec. 27, Ch. 693, L. 1979.

History: En. 84-309 by Sec. 72, Ch. 566, L. 1977; R.C.M. 1947, 84-309.

15-7-122. Temporary authority to exceed mill levy limitations. Taxing jurisdictions may adopt and levy for a budget equal to 105% of the preceding year's budget, statutory mill levy limitations notwithstanding, unless the taxable valuation therein has increased to a level which would allow statutory mill levies to produce a budget equal to 105% of the preceding year's budget.

History: En. 84-310 by Sec. 73, Ch. 566, L. 1977; R.C.M. 1947, 84-310.

Cross-References

Use of resort community tax revenue to reduce property tax, 7-6-4467.

15-7-123 through 15-7-130 reserved.

15-7-131. Policy. It is the policy of the state of Montana to provide for equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.

History: En. Sec. 1, Ch. 13, L. 1989.

15-7-132. Repealed. Sec. 10, Ch. 680, L. 1991.

History: En. Sec. 2, Ch. 13, L. 1989; amd. Sec. 5, Ch. 13, Sp. L. July 1992.

15-7-133. Repealed. Sec. 10, Ch. 680, L. 1991.

History: En. Sec. 3, Ch. 13, L. 1989; amd. Sec. 6, Ch. 13, Sp. L. July 1992.

15-7-134. Extension of reappraisal cycle for class three land. Notwithstanding any other provisions of this code, the reappraisal cycle for class three land commencing January 1, 1986, must be extended to December 31, 1993. The new values determined during this period must be placed on the tax rolls in the year immediately following the completion of the revaluation cycle for class three land.

History: **En. Sec. 7, Ch. 13, Sp. L. July 1992.**

Part 2

Greenbelt Appraisal

Part Cross-References

Legislature to enact laws to enhance and develop agriculture, Art. XII, sec. 1, Mont. Const.

Classification and taxable percentage of agricultural land, 15-6-133.

Assessment of agricultural land, 15-8-111.

15-7-201. *(Temporary — applicable to 1986 land valuation schedules)* **Legislative intent — value of agricultural property.** (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use. Within each class, land must be assessed at a value that is fairly based on its ability to produce, taking into consideration the classification system in existence on January 1, 1986, provided that the department may consolidate tillable irrigated land classes. With relation to irrigated land, water costs must be taken into consideration, except at no time may the resulting value of irrigated land be reduced below the value that the land would have if it were not irrigated.

(3) Capital costs, such as improved water distribution, fertilizer, and land shaping that increase productivity, may not be used in determining assessed values.

15-7-201. *(Applicable to 1994 and later land valuation schedules)* **Legislative intent — value of agricultural property.** (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by production categories. Production categories are determined from the productive capacity of the land based on yield.

(4) In computing the agricultural land valuation schedules to take effect on January 1, 1994, and, thereafter, on the effective date when each revaluation cycle takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula $V = I/R$ where:

(a) V is the per-acre productive capacity value of agricultural land in each land use and production category;

(b) I is the per-acre net income of agricultural land in each land use and production category and is to be determined as provided in subsection (5); and

(c) R is the capitalization rate and is equal to 6.4%. This capitalization rate must remain in effect until new agricultural land valuation schedules are computed as required by law.

(5) (a) Net income must be determined separately in each land use based on production categories.

(b) Net income must be based on commodity price data, grazing fees, crop share arrangements, and water cost data for the base period.

(i) Commodity price data and grazing fees for the base period must be obtained from the Montana Agricultural Statistics and from the Montana crop and livestock reporting service.

(ii) Crop share arrangements are based on the rental value of the land and average landowner costs.

(iii) Allowable water costs consist only of the per-acre labor costs and energy costs of irrigation.

(A) Labor costs are zero for pivot sprinkler irrigation systems; $4.50 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and $9 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in 1992. By July 1, 1993, an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in 1992. In the event that no energy costs were incurred in 1992, the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year's energy costs to reflect costs in 1992.

(c) The base crop for valuation of irrigated land is alfalfa hay, adjusted to 80% of sales price, and the base crop for valuation of nonirrigated land is wheat. The base unit for valuation of grazing lands is the average grazing fee for a 1,000-pound animal.

(d) The base period used to determine net income must be the most recent 7 years for which data is available prior to the date the revaluation cycle ends. Commodity price data and grazing fees referred to in subsection (5)(b) must be averaged for the 7-year period, but the average must exclude the lowest and highest commodity prices or grazing fees in the period.

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics to compile and review the data required by subsections (4) and (5). The advisory committee shall include one member of the Montana state university, college of agriculture, staff. The advisory committee shall recommend agricultural land valuation schedules to the department. With respect to irrigated land, the value of irrigated land may not be below the value that the land would have if it were not irrigated.

History: En. Sec. 1, Ch. 512, L. 1973; R.C.M. 1947, 84-437.1; amd. Sec. 1, Ch. 644, L. 1983; amd. Sec. 1, Ch. 681, L. 1985; amd. Sec. 1, Ch. 705, L. 1985; amd. Sec. 1, Ch. 172, L. 1991; amd. Sec. 3, Ch. 680, L. 1991; amd. Sec. 2, Ch. 267, L. 1993.

Compiler's Comments

1993 Amendment: (Temporary version) Chapter 267 made minor changes in style.

(Version applicable to 1994 and later land valuation schedules) In (3), after "Within each class, land", substituted "must be subclassified by production categories. Production categories are determined from the productive capacity of the land based on yield" for "shall be assessed at a value that is fairly based on its productive capacity"; in (4) substituted "January 1, 1994" for "the date that the revaluation cycle commencing January 2, 1986"; in (4)(b) substituted a provision that "I" is to be determined as provided in subsection (5) for a former formula for the determination (see 1991 MCA for the formula); at end of first sentence of (4)(c) substituted "and is equal to 6.4%" for "to be determined by the department as provided in subsection (9)" and inserted second sentence maintaining rate until new valuation schedules are computed; in (5) substituted provisions that net income must be determined separately in each land use based on production categories and on commodity price data, grazing fees, crop share arrangements, and water cost data for the base period, provisions for determining the cost of the items, and a provision establishing the base period used to determine net income for former (5) that read: "(5) Net income shall be:

(a) calculated for each year of a base period, which is the most recent 3-year period for which data are available, prior to a revaluation of property as provided in 15-7-111; and

(b) based on commodity price and production cost data for the base period from such sources as may be considered appropriate by the department, which sources shall include Montana state university"; in (6) substituted "The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5)" for a list of items (see 1991 MCA for text) that the Department had to compile data for; in (7), at beginning of first sentence, substituted the Governor for the Department as the appointing authority, before "review" inserted "compile and", and after "data" substituted "required by subsections (4) and (5)" for "prepared by Montana state university and advise the department on the implementation of subsections (2) through (6)", in second sentence, after "university", inserted "college of agriculture", inserted third sentence requiring the committee to recommend agricultural land valuation schedules to the Department, and inserted fourth sentence providing that the value of irrigated land may not be below the value the land would have if not irrigated; deleted (8) through (10) that related to separate net income determinations for certain lands and calculation of the capitalization rate and the effective tax rate (see 1991 MCA for text); and made minor changes in style. Amendment effective April 2, 1993.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

15-7-202. *(Temporary)* **Eligibility of land for valuation as agricultural.** (1) Contiguous parcels of land totaling 20 acres or more under one ownership shall be eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a commercial or industrial use.

(2) Except as provided in subsection (8), contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) shall not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation.

(6) If land has been valued, assessed, and taxed as agricultural land in any year, it shall continue to be so valued, assessed, and taxed until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use.

(8) Subject to the provisions of subsections (2)(a) and (2)(b), property upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres before the property is eligible to be classified as agricultural land. Improvements devoted to crop production described in this subsection may not be included in class eleven property.

15-7-202. *(Effective July 1, 1994)* **Eligibility of land for valuation as agricultural.** (1) (a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family members, agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(c) For the purposes of this subsection (1), "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:

(i) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(ii) rental payments made under the federal conservation reserve program or a successor to that program.

(2) Except as provided in subsection (8), contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

(6) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is taxed as provided in 15-6-133(1)(c). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use.

(8) Subject to the provisions of subsections (1), (2)(a), and (2)(b), property upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres before the property is eligible to be classified as agricultural land. Improvements devoted to crop production described in this subsection may not be included in class eleven property.

History: En. Sec. 4, Ch. 512, L. 1973; amd. Sec. 2, Ch. 56, L. 1974; amd. Sec. 1, Ch. 457, L. 1975; R.C.M. 1947, 84-437.2; amd. Sec. 1, Ch. 608, L. 1979; amd. Sec. 16, Ch. 693, L. 1979;

amd. Sec. 4, Ch. 681, L. 1985; amd. Sec. 1, Ch. 699, L. 1985; amd. Sec. 1, Ch. 35, Sp. L. June 1986; amd. Sec. 1, Ch. 590, L. 1991; amd. Sec. 2, Ch. 705, L. 1991; amd. Sec. 16, Ch. 773, L. 1991; amd. Sec. 3, Ch. 627, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 627 near beginning of (1)(a), before "acres", substituted "160" for "20" and near end, before "commercial", inserted "residential"; inserted (1)(b) establishing criteria for parcels of land of 20 acres or more but less than 160 acres to be eligible for classification as agricultural land; inserted first two sentences of (6) requiring application before land less than 160 acres may be classified as agricultural; in (8) included subsection (1) in subsection references; and made minor changes in style. Amendment effective July 1, 1994.

Applicability: Section 5(2), Ch. 627, L. 1993, provided that this section applies to tax years beginning after December 31, 1993.

Cross-References

Definition of "agricultural" and "poultry", 15-1-101.

Timberland — class thirteen property, 15-6-143.

Montana Subdivision and Platting Act, Title 76, ch. 3.

15-7-203. Agricultural uses only considered in valuation. In valuing land as agricultural, the department of revenue shall consider only those indicia of value which such land has for agricultural use.

History: En. Sec. 5, Ch. 512, L. 1973; amd. Sec. 3, Ch. 56, L. 1974; R.C.M. 1947, 84-437.3.

15-7-204. Repealed. Sec. 6, Ch. 201, L. 1981.

History: En. Sec. 6, Ch. 512, L. 1973; R.C.M. 1947, 84-437.4.

15-7-205. Repealed. Sec. 6, Ch. 201, L. 1981.

History: En. Sec. 7, Ch. 512, L. 1973; amd. Sec. 4, Ch. 126, L. 1977; R.C.M. 1947, 84-437.5.

15-7-206. Improvements on agricultural land. In determining the total area of land actively devoted to agricultural use, there shall be included the area of all land under barns, sheds, silos, cribs, greenhouses, and like structures, lakes, dams, ponds, streams, irrigation ditches, and like facilities.

History: En. Sec. 8, Ch. 512, L. 1973; amd. Sec. 2, Ch. 457, L. 1975; R.C.M. 1947, 84-437.6.

15-7-207. Continuance of valuation as agricultural land. Continuance of valuation, assessment, and taxation under this part shall depend upon continuance of the land in agricultural use and compliance with the other requirements of this part and not upon continuance in the same owner of title to the land.

History: En. Sec. 10, Ch. 512, L. 1973; R.C.M. 1947, 84-437.8; amd. Sec. 3, Ch. 201, L. 1981.

15-7-208. Reclassification by department. The department of revenue or its agent may reclassify land as nonagricultural upon giving due notice to the property owner or any purchaser under contract for deed under the provisions of 15-7-102. Upon notice of a change in classification of land from agricultural to another use, the property owner may petition the department to reclassify the land as agricultural by completing a form prescribed by the department and by producing whatever information is necessary to prove that the subject land meets the definition of agricultural land embodied in 15-7-202.

History: En. 84-437.15 by Sec. 4, Ch. 56, L. 1974; R.C.M. 1947, 84-437.15; amd. Sec. 12, Ch. 526, L. 1983.

15-7-209. Reclassification by owner — lien. (1) Whenever land which is or has been in agricultural use and is or has been valued, assessed, and taxed for agricultural use is applied to a use other than agricultural, the owner shall notify the county assessor.

(2) The county assessor shall execute, in a form eligible for recording, releases of lien, for those liens attributable to the former rollback tax, and the assessor shall record the releases in the office of the clerk and recorder.

History: En. 84-437.16 by Sec. 5, Ch. 56, L. 1974; R.C.M. 1947, 84-437.16; amd. Sec. 1, Ch. 201, L. 1981; amd. Sec. 1, Ch. 423, L. 1981; amd. Sec. 1, Ch. 585, L. 1981.

15-7-210. Tax on change of use of part of tract. Separation or split-off of a part of the land which is being valued, assessed, and taxed under this part, either by conveyance or other actions of the owner of such land, for a use other than agricultural shall subject the land so separated to reclassification by the department but shall not impair the right of the remaining land to continuance of valuation, assessment, and taxation hereunder, provided it meets the minimum requirements of this part.

History: En. Sec. 11, Ch. 512, L. 1973; R.C.M. 1947, 84-437.9; amd. Sec. 4, Ch. 201, L. 1981.

15-7-211. Repealed. Sec. 6, Ch. 201, L. 1981.

History: En. Sec. 12, Ch. 512, L. 1973; R.C.M. 1947, 84-437.10.

15-7-212. Tract crossing county line — whole. Where contiguous land in agricultural use in one ownership is located in more than one county, compliance with the minimum requirements shall be determined on the basis of the total area and value of farm crops on such land and not the area or value of farm crops on land which is located in the particular county.

History: En. Sec. 13, Ch. 512, L. 1973; R.C.M. 1947, 84-437.11.

15-7-213. Factual details as to agricultural land on assessor's list to be consistent. The factual details to be shown on the assessor's tax list and duplicate with respect to land which is being valued, assessed, and taxed under this part shall be the same as those set forth by the assessor with respect to other taxable property in the county.

History: En. Sec. 14, Ch. 512, L. 1973; R.C.M. 1947, 84-437.12.

15-7-214. Repealed. Sec. 6, Ch. 201, L. 1981.

History: En. Sec. 15, Ch. 512, L. 1973; R.C.M. 1947, 84-437.13.

15-7-215. Repealed. Sec. 6, Ch. 201, L. 1981.

History: En. Sec. 16, Ch. 512, L. 1973; R.C.M. 1947, 84-437.14; amd. Sec. 5, Ch. 581, L. 1979.

15-7-216. Repealed. Sec. 2, Ch. 695, L. 1979.

History: En. Sec. 1, Ch. 191, L. 1957; amd. Sec. 14, Ch. 405, L. 1973; amd. Sec. 1, Ch. 353, L. 1975; amd. Sec. 1, Ch. 123, L. 1977; R.C.M. 1947, 84-429.7(2).

15-7-217 through 15-7-220 reserved.

15-7-221. Phasein of the taxable value of agricultural land. The increase or decrease in taxable value of agricultural land resulting from the change in the method of determining productive capacity value under 15-7-201 must be phased in beginning January 1, 1994, as follows:

(1) For the year beginning January 1, 1994, and ending December 31, 1994, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, 1993, value by 25% of the difference between the product of the productive capacity value of

agricultural land for 1994 determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, 1993.

(2) For the year beginning January 1, 1995, and ending December 31, 1995, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, 1993, value by 50% of the difference between the product of the productive capacity value of agricultural land for 1994 determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, 1993.

(3) For the year beginning January 1, 1996, and ending December 31, 1996, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, 1993, value by 75% of the difference between the product of the productive capacity value of agricultural land for 1994 determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, 1993.

(4) Beginning January 1, 1997, the taxable value of agricultural land in each land use and production category is equal to 100% of the productive capacity value of agricultural land determined under 15-7-201 times the class three tax rate.

History: En. Sec. 3, Ch. 267, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

15-7-222. *(Temporary)* **Advisory committee — review of water costs and crop share arrangements.** (1) The governor shall appoint an advisory committee to review water costs, crop share arrangements, and other issues involving the assessment and valuation of agricultural land. The membership of the committee must include:

(a) one member representing urban interests;

(b) two members representing water users, one of whom must be an individual water user and one of whom must be a representative of an organized irrigation district;

(c) one member representing grazing interests;

(d) one member representing nonirrigated cropland interests;

(e) one member representing multiple-use farmers and ranchers;

(f) one member representing financial institutions;

(g) two members of the legislature, not of the same political party, one of whom must be a member of the senate and one of whom must be a member of the house of representatives; and

(h) one member representing local government.

(2) The committee shall review water costs and crop share arrangements associated with irrigated lands and recommend to the department of revenue by July 1, 1994, how water costs and crop share arrangements should be considered for the valuation of irrigated land. The committee may recommend the adjustment in the valuation of other agricultural land classes in order to prevent a reduction in the level of statewide taxable valuation of agricultural land. *(Terminates January 1, 1995—sec. 12, Ch. 267, L. 1993.)*

History: En. Sec. 4, Ch. 267, L. 1993.

Compiler's Comments

Termination: Section 12, Ch. 267, L. 1993, provided: "[Section 4] [15-7-222] terminates January 1, 1995."

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

Part 3

Realty Transfer Act

15-7-301. Short title. This part may be cited as the "Realty Transfer Act".

History: En. 84-7301 by Sec. 1, Ch. 528, L. 1975; R.C.M. 1947, 84-7301.

15-7-302. Purpose. The purpose of this part is to obtain sales price data necessary to the determination of statewide levels and uniformity of real estate assessments by the most efficient, economical, and reliable method.

History: En. 84-7302 by Sec. 2, Ch. 528, L. 1975; R.C.M. 1947, 84-7302.

15-7-303. Definitions. As used in this part, the following definitions apply:

(1) "Partial interest" means a percentage interest in property when less than 100%.

(2) "Person" means and includes an individual, corporation, partnership, or other business organization, trust, fiduciary, or agent or any other party presenting a document for recordation.

(3) "Real estate" includes:

(a) land;

(b) growing timber;

(c) buildings, structures, fixtures, fences, and improvements affixed to land.

(4) "Transfer" means an act of the parties or of the law by which the title to real property is conveyed from one person to another.

(5) "Value" means the amount of the full actual consideration therefor paid or to be paid, including the amount of any lien or liens thereon.

History: En. 84-7303 by Sec. 3, Ch. 528, L. 1975; R.C.M. 1947, 84-7303.

15-7-304. Report of transfers — change of ownership records. (1) All transfers of real property which are not evidenced by a recorded document, except those transfers otherwise provided for in this part, shall be reported to the department of revenue or its agent on the form prescribed.

(2) No agent of the department may change or be required to change any ownership records used for the assessment or taxation of real property unless he has received a transfer certificate from the clerk and recorder or a transfer has been reported to him.

History: En. 84-7304 by Sec. 4, Ch. 528, L. 1975; R.C.M. 1947, 84-7304.

15-7-305. Realty transfer certificate required. (1) The county clerk and recorder shall cause to be executed by the parties to the transaction or their agents or representatives a certificate declaring the consideration paid or to be paid for the real estate transferred.

(2) No instrument or deed evidencing a transfer of real estate may be accepted for recordation until the certificate has been received by the county clerk and recorder. The validity or effectiveness of an instrument or deed as

between the parties to it shall not be affected by the failure to comply with the provisions in this part.

(3) The form of certificate shall be prescribed by the department of revenue, and the department shall provide an adequate supply of such forms to each county clerk and recorder in the state.

(4) The clerk and recorder shall prepare a like certificate for each contract for deed filed for recording.

(5) The clerk and recorder shall transmit each executed certificate to the department.

History: En. 84-7305 by Sec. 5, Ch. 528, L. 1975; R.C.M. 1947, 84-7305.

15-7-306. Rules. The department of revenue may prescribe such rules as are reasonably necessary to facilitate and expedite the provisions and administration of this part.

History: En. 84-7306 by Sec. 6, Ch. 528, L. 1975; R.C.M. 1947, 84-7306.

15-7-307. Certificate — exceptions. The certificate imposed by this part shall not apply to:

(1) an instrument recorded prior to July 1, 1975;

(2) the sale of agricultural land when the land is used for agricultural purposes;

(3) the sale of timberland when the land is used for producing timber;

(4) the United States of America, this state, or any instrumentality, agency, or subdivision thereof;

(5) an instrument which (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;

(6) a transfer pursuant to court decree;

(7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;

(8) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

(9) a transfer of decedents' estates;

(10) a transfer of a gift;

(11) a transfer between husband and wife or parent and child with only nominal actual consideration therefor;

(12) an instrument the effect of which is to transfer the property to the same party or parties;

(13) a sale for delinquent taxes or assessments, sheriff sale, bankruptcy action, or mortgage foreclosure;

(14) a transfer made in contemplation of death.

History: En. 84-7307 by Sec. 7, Ch. 528, L. 1975; R.C.M. 1947, 84-7307; amd. Sec. 5, Ch. 681, L. 1985.

Cross-References

Timberland classified as class thirteen property, 15-6-143.

15-7-308. Disclosure of information restricted. The certificate required by this part and the information therein shall not be a public record and shall be held confidential by the county clerk and recorder, county assessor, and department of revenue. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The foregoing provisions shall not apply to compilations from such certificates or to summaries, analyses, and evaluations based upon such compilations.

History: En. 84-7308 by Sec. 8, Ch. 528, L. 1975; R.C.M. 1947, 84-7308.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

15-7-309. Classification or assessment methods. (1) This part shall not change or modify the methods of classification or assessment of real estate as provided for in this title or in any law of this state.

(2) The sale price of real estate shall not be the sole determinant of assessed value. The department shall consider, wherein the consideration is to be paid in deferred installments over a period of 10 years or more, the terms of the contract, amount of down payment, amount of each installment, rate of interest, and other covenants or exceptional circumstances which may affect the consideration paid for real estate.

History: En. 84-7309 by Sec. 9, Ch. 528, L. 1975; R.C.M. 1947, 84-7309.

15-7-310. Penalty. A person convicted of violating any provision of this part shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 84-7310 by Sec. 12, Ch. 528, L. 1975; R.C.M. 1947, 84-7310.

15-7-311. Costs. Notwithstanding 1-2-112, the duties, obligations, or responsibilities imposed on local government entities by this part are such that related costs are incurred as a part of their normal operating procedures.

History: En. 84-7311 by Sec. 10, Ch. 528, L. 1975; R.C.M. 1947, 84-7311.

Part 4

Appraisal of Residential Property in Areas of Changing Use

15-7-401. Purpose. The legislature finds that the rapid commercial and industrial growth in many Montana cities and towns is engulfing homes. Owners of these homes are often forced to pay higher property taxes upon these homes because their property is appraised on its industrial or commercial use. The legislature intends that houses and lots in these areas of changing use shall be appraised on their value as residential property.

History: En. Sec. 1, Ch. 702, L. 1979.

15-7-402. Application for residential appraisal of certain land and improvements. (1) Any person wishing to insure that his residential land and improvements are appraised as residential may file a signed application with the department of revenue or its agents.

(2) In the application, the owner must:

(a) assert that the property is used only for human habitation and is the principal residence of the owner;

(b) sign a statement pledging that the property will continue to be used as residential property; and

(c) show that the statement has been filed with the county clerk and recorder of the county in which the property is located.

(3) When the department has approved an application for residential use, the department and its agents shall consider only those indicia of value that the property has for residential use.

(4) Failure to file an application under this section shall not result in reclassification on real property unless there has been an actual change in use.

History: En. Sec. 2, Ch. 702, L. 1979.

15-7-403. Rollback tax — computation. (1) (a) If land and improvements appraised as residential as a result of an application filed under 15-7-402 are changed to industrial or commercial use, the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable by the owner of the property at the time of the change in use.

(b) As used in this section, "rollback" means the period preceding the change in use, not to exceed 5 years, during which the property was appraised as residential.

(2) The department's agent shall determine the amount of rollback tax due on the property by:

(a) determining the taxable value of the property as industrial or commercial property;

(b) multiplying this value by the sum of the annual mill levies applied in the taxing jurisdiction in which the land is located during the rollback period; and

(c) subtracting from this figure the actual property tax paid on the property during this period.

History: En. Sec. 3, Ch. 702, L. 1979.

CHAPTER 8

ASSESSMENT PROCEDURE

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Chapter Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Taxation of condominium units, 15-8-511, 15-8-512.

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

Part 1
General Provisions

15-8-101. Department responsibilities. The department of revenue shall have full charge of assessing all property subject to taxation and equalizing values and shall secure such personnel as is necessary to properly perform its duties.

History: En. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; R.C.M. 1947, 84-402(2).

Cross-References

Assessment of Department basis for taxation of cities and towns, 7-6-4409.

15-8-102. County assessor as agent of department — counties to furnish office space. (1) The county assessors of the various counties of the state are agents of the department of revenue for the purpose of locating and providing the department a description of all taxable property within the county, together with other pertinent information, and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment rolls. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection.

(2) The county commissioners of the various counties shall provide existing office space in the county courthouse for use by the county assessor, his deputies and staff, and the state appraiser and staff, if such space is reasonably available. If such space is not reasonably available in the courthouse and the same must be contracted for, the department shall pay the cost thereof. Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department.

(3) The department must provide maps for the use of its agents, showing the private lands owned or claimed in the county and, if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a state charge and must be paid from the state general fund.

History: (1), (2)En. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; Sec. 84-402, R.C.M. 1947; (3)En. Sec. 3732, Pol. C. 1895; re-en. Sec. 2551, Rev. C. 1907; re-en. Sec. 2056, R.C.M. 1921; Cal. Pol. C. Sec. 3658; re-en. Sec. 2056, R.C.M. 1935; amd. Sec. 32, Ch. 405, L. 1973; Sec. 84-509, R.C.M. 1947; R.C.M. 1947, 84-402(1), (4), 84-509.

Cross-References

Agent required to submit form for state land equalization payment, 77-1-503.

Agent required to explain and determine if taxpayer wishes to be covered under crop hail insurance levy, 80-2-204.

Agent required to add irrigation district assessment to assessment book, 85-7-2136.

Agent required to add drainage district assessment to assessment book, 85-8-601.

15-8-103. Department to conduct assessing schools. The department of revenue shall schedule and hold area schools within the state for appraisers and assessors as often as it considers necessary. The costs of such appraisers and assessors attending shall be borne by the state. The department shall notify all assessors and appraisers at least 6 months before such school is scheduled. All assessors and appraisers shall attend.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(part).

15-8-104. Department audit of taxable value — costs of audit paid by department. (1) When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells and all other types of property subject to ad valorem taxation.

(2) The department of revenue shall conduct audits of the assessment of all commercial personal property to assure that the value of the property in those classes reflects market value. Because the assessed value of commercial personal property is defined as market value under 15-8-111(2), the audits conducted by the department shall be primarily directed toward ensuring that all taxable personal property is reported to the department.

(3) The cost of any audit performed under subsection (1) or (2) shall be paid by the department.

History: (1)En. 84-708.9 by Sec. 1, Ch. 235, L. 1975; amd. Sec. 1, Ch. 107, L. 1977; Sec. 84-708.9, R.C.M. 1947; (2)En. 84-708.10 by Sec. 2, Ch. 235, L. 1975; Sec. 84-708.10, R.C.M. 1947; R.C.M. 1947, 84-708.9, 84-708.10; amd. Sec. 1, Ch. 222, L. 1979; amd. Sec. 10, Ch. 634, L. 1979; amd. Sec. 3, Ch. 613, L. 1981; amd. Sec. 9, Ch. 743, L. 1985.

15-8-105. Purpose. The legislature hereby establishes a system of instruction, examination, and certification for all county assessors for the following purposes:

(1) to establish and document the achievement of competency requirements for county assessors and to assure that all assessors possess and are able to apply the knowledge, skills, and abilities required in the daily performance of assessor duties; and

(2) to benefit the interests of local government units, property taxpayers, and property tax administrators statewide by the professional development and increased competency of elected or appointed county assessors.

History: En. Sec. 2, Ch. 623, L. 1989.

15-8-106. Assessor certification training and continuing education. (1) The department of revenue shall conduct annual assessor certification training and continuing education. The cost of conducting such education must be borne by the department. The department shall pay the mileage and per diem of each assessor and each assessor-elect attending.

(2) The annual assessor certification training includes:

(a) personal property assessment training;

(b) training in fundamentals of real property appraisal in the course I format of the international association of assessing officers; and

(c) training in property tax administration, personnel management, fiscal management, public relations, assessor ethics, and related public management principles.

(3) The annual assessor continuing education must include 18 hours of advanced training covering the subjects described in subsection (2).

(4) An assessor shall satisfactorily complete 18 hours of advanced training within a 3-year period.

(5) The department shall issue an assessor a document acknowledging that he is a certified assessor upon his satisfactory completion of the training in subsection (2) and 18 months' service as an elected or appointed assessor.

History: En. Sec. 3, Ch. 623, L. 1989.

15-8-107 through 15-8-110 reserved.

15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Title 15 and Title 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, or 15-23-517.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Beginning January 1, 1990, and ending December 31, 1993, properties in 15-6-143, under class ten, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(e) Beginning January 1, 1994, properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town. *(Subsection (6)(d) terminates January 1, 1994—sec. 19, Ch. 783, L. 1991.)*

History: **En. Sec. 5, p. 76, L. 1891; re-en. Sec. 3690, Pol. C. 1895; re-en. Sec. 2502, Rev. C. 1907; re-en. Sec. 2001, R.C.M. 1921; Cal. Pol. C. Sec. 3627; re-en. Sec. 2001, R.C.M. 1935; amd. Sec. 2, Ch. 512, L. 1973; amd. Sec. 1, Ch. 56, L. 1974; amd. Sec. 1, Ch. 209, L. 1975; amd. Sec. 1, Ch. 436, L. 1975; amd. Sec. 5, Ch. 498, L. 1977; amd. Sec. 21, Ch. 566, L. 1977; R.C.M. 1947, 84-401; amd. Sec. 11, Ch. 634, L. 1979; amd. Secs. 10, 13, Ch. 686, L. 1979; amd. Sec. 17, Ch. 693, L. 1979; amd. Sec. 66, Ch. 575, L. 1981; amd. Sec. 2, Ch. 578, L. 1981; amd. Sec. 3, Ch. 323, L. 1983; amd. Sec. 1, Ch. 463, L. 1985; amd. Sec. 6, Ch. 516, L. 1985; amd. Sec. 6, Ch. 681, L. 1985; amd. Sec. 7, Ch. 743, L. 1985; amd. Sec. 4, Ch. 7, Sp. L. March 1986; amd. Sec. 3, Ch. 34, Sp. L. June 1986; amd. Sec. 5, Ch. 35, Sp. L. June 1986; amd. Sec. 37, Ch. 370, L. 1987; amd. Sec. 6, Ch. 453, L. 1987; amd. Sec. 1, Ch. 593, L. 1987; amd. Sec. 3, Ch. 618, L. 1987; amd. Sec. 4, Ch. 531, L. 1989; amd. Sec. 4, Ch. 695, L. 1991; amd. Sec. 16, Ch. 773, L. 1991; amd. Sec. 10, Ch. 783, L. 1991; amd. Sec. 4, Ch. 506, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 506 in (6)(a), at end, inserted "or 15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

Cross-References

Definition of assessed value, 15-1-101.

Taxation of federal property held under contract of sale, lease, or other interest, Title 15, ch. 24, part 11.

Taxation of land subject to conservation easement, 76-6-208.

15-8-112. Assessments to be made on classification and appraisal. (1) The assessments of all lands, city and town lots, and all improvements must be made on the classification and appraisal as made or caused to be made by the department of revenue.

(2) The percentage basis of assessed value as provided for in chapter 6, part 1, is determined and assigned by the department when it makes its annual assessment of the property which it is required to assess centrally under the laws of this state. The department shall transmit such determination and assignment to its agents in the various counties with the assessments so made, and its determination is final except as to the right of review in the state tax appeal board or the proper court.

History: **(1)En. Sec. 3, Ch. 191, L. 1957; amd. Sec. 16, Ch. 405, L. 1973; Sec. 84-429.9, R.C.M. 1947; (2)En. Sec. 3, Ch. 61, L. 1925; re-en. Sec. 2001.3, R.C.M. 1935; amd. Sec. 49, Ch. 100, L. 1973; amd. Sec. 2, Ch. 516, L. 1973; amd. Sec. 8, Ch. 98, L. 1977; amd. Sec. 50, Ch. 566, L. 1977; Sec. 84-404, R.C.M. 1947; R.C.M. 1947, 84-404, 84-429.9.**

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-8-113. Appeal from percentage assignment. If any taxpayer shall feel aggrieved at the percentage assignment so made by the department of revenue or its agent, he shall have the right to appeal to the county tax appeal board on the percentage assignment the same as he now has on valuations and also the right to appeal from the county tax appeal board to the state tax appeal board, whose findings shall be final except as to the right of review in the proper courts.

History: En. Sec. 2, Ch. 61, L. 1925; re-en. Sec. 2001.2, R.C.M. 1935; amd. Sec. 3, Ch. 405, L. 1973; R.C.M. 1947, 84-403.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

County Tax Appeal Board, Title 15, ch. 15, part 1.

15-8-114. Department to prepare blanks and rolls for assessor. It shall be made the duty of the department of revenue to prescribe such forms of assessment blanks and assessor's rolls as will comply with the above provisions, grouping all the same percentage class as nearly as possible in one group on blanks and assessor's roll.

History: En. Sec. 5, Ch. 61, L. 1925; re-en. Sec. 2001.5, R.C.M. 1935; amd. Sec. 3, Ch. 516, L. 1973; R.C.M. 1947, 84-405.

15-8-115. Department to defend property tax appeals — costs and judgments. (1) The department of revenue or its designee is the party defendant in any proceeding before a county tax appeal board, the state tax appeal board, or a court of law that seeks to dispute or adjust an action of the department under 15-8-101 arising from the exercise of the department's duties as prescribed by law or administrative rule. For the purposes of proceedings before county tax appeal boards, service on the department may be obtained by serving the local county assessor.

(2) Costs, if any, shall be assessed against the department and not against a local taxing unit.

(3) In any suit brought in the courts of this state for the refund of taxes paid under protest and those funds are held by the treasurer of a unit of local government in a protest fund, the court shall enter judgment, exclusive of costs, against the treasurer if the court finds the taxes should be refunded.

History: En. Sec. 1, Ch. 589, L. 1979; amd. Sec. 1, Ch. 398, L. 1983.

Part 2

When Property Is Assessed

Part Cross-References

Taxation of condominium units, 15-8-511, 15-8-512.

Owner of life estate under duty to pay taxes, 70-16-103.

15-8-201. General assessment day. (1) The department of revenue or its agent must, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department or its agent must assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after midnight of January 1 next preceding. No mistake in the name of the owner or supposed owner of real property, however, renders the assessment invalid.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) motor homes, travel trailers, and campers;

(c) watercraft;

(d) livestock;

(e) property defined in 61-1-104 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

(f) mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade; and

(g) property subject to the provisions of 15-16-203.

(3) Credits must be assessed as provided in 15-1-101(1)(f).

History: **En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R.C.M. 1921; Cal. Pol. C. Sec. 3628; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; re-en. Sec. 2002, R.C.M. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977; R.C.M. 1947, 84-406(1) thru (3); amd. Sec. 1, Ch. 663, L. 1979; amd. Sec. 22, Ch. 712, L. 1979; amd. Sec. 12, Ch. 614, L. 1981; amd. Sec. 5, Ch. 20, L. 1985; amd. Sec. 7, Ch. 516, L. 1985; amd. Sec. 38, Ch. 370, L. 1987; amd. Sec. 6, Ch. 611, L. 1987; amd. Sec. 3, Ch. 649, L. 1987; amd. Sec. 2, Ch. 570, L. 1991.**

Cross-References

County Assessor as agent of the Department, 15-8-102.

"Motorcycle" defined, 61-1-105.

"Quadricycle" defined, 61-1-133.

Fee in lieu of tax on motor homes and travel trailers, 61-3-521.

Assessment of land purchased from state, 77-2-313.

15-8-202. Motor vehicle assessment. (1) The department or its agent must, in each year, ascertain and assess all motor vehicles, other than motor homes, travel trailers, and campers or mobile homes, in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles as provided by law, subject to 61-3-313 through 61-3-316 and 61-3-501. The assessment for all motor vehicles must be made in accordance with 61-3-503. The motor vehicles shall be assessed in each year to the persons by whom owned or claimed or in whose possession or control they were at midnight of January 1 or the anniversary registration date thereof, whichever is applicable.

(2) No tax may be assessed against motor vehicles subject to taxation that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation brought into the state subsequent to January 1 as motor vehicle dealers' inventories shall be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at market value as of January 1.

History: **En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R.C.M. 1921; Cal. Pol. C. Sec. 3628; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; re-en. Sec. 2002, R.C.M. 1935; amd. Sec. 9, Ch. 72, L.**

1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977; R.C.M. 1947, 84-406(4); amd. Sec. 23, Ch. 712, L. 1979; amd. Sec. 1, Ch. 262, L. 1981; amd. Sec. 13, Ch. 614, L. 1981; amd. Sec. 2, Ch. 433, L. 1985; amd. Sec. 8, Ch. 516, L. 1985; amd. Sec. 7, Ch. 611, L. 1987.

Cross-References

"Motorcycle" defined, 61-1-105.

"Quadricycle" defined, 61-1-133.

Assessment of motor vehicles, 61-3-503.

Registration of foreign motor vehicles, Title 61, ch. 3, part 7.

Transportation of vehicles through the state, Title 61, ch. 4, part 3.

15-8-203. Repealed. Sec. 30, Ch. 712, L. 1979.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R.C.M. 1921; Cal. Pol. C. Sec. 3628; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; re-en. Sec. 2002, R.C.M. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977; R.C.M. 1947, 84-406(5).

15-8-204. Supplemental assessment. When any personal property liable to taxation is brought into a county at any time after the second Monday of July and such property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected, as provided in this code, at any time.

History: En. Sec. 4022, Pol. C. 1895; re-en. Sec. 2740, Rev. C. 1907; re-en. Sec. 2035, R.C.M. 1921; re-en. Sec. 2035, R.C.M. 1935; amd. Sec. 20, Ch. 405, L. 1973; R.C.M. 1947, 84-441.

15-8-205. Initial assessment of class four trailer and mobile home property — when. The county assessor shall assess all class four trailer and mobile home property immediately upon arrival in the county if the taxes have not been previously paid for that year in another county in Montana.

History: En. Sec. 5, Ch. 632, L. 1983; amd. Sec. 10, Ch. 773, L. 1991.

Part 3
How Property Is Assessed

15-8-301. Statement — what to contain. (1) The department of revenue or its agent must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person or in his possession or under his control at midnight on January 1. Such statement must be in writing, showing separately:

(a) all property belonging to, claimed by, or in the possession or under the control or management of such person;

(b) all property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member;

(c) all property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent;

(d) the county in which such property is situated or in which it is liable to taxation and (if liable to taxation in the county in which the statement is made) also the city, town, school district, road district, or other revenue districts in which it is situated;

(e) an exact description of all lands in parcels or subdivisions not exceeding 640 acres each and the sections and fractional sections of all tracts of land containing more than 640 acres which have been sectionized by the United States government; improvements and personal property; all taxable state, county, city, or other municipal or public bonds and the taxable bonds of any person, firm, or corporation and deposits of money, gold dust, or other valuables and the names of the persons with whom such deposits are made and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured and the property in the county affected thereby;

(f) all solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member or due or owing to any corporation of which he is president, secretary, cashier, or managing agent;

(g) all depots, shops, stations, buildings, and other structures erected on the space covered by the right-of-way and all other property owned by any person owning or operating any railroad within the county.

(2) Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer need not include such property in the statement made by him but this statement must show the name of the person or officer who made the statement in which such property is included.

(3) The fact that such statement is not required or that a person has not made such statement, under oath or otherwise, does not relieve his property from taxation.

History: En. Sec. 14, p. 78, L. 1891; amd. Sec. 3701, Pol. C. 1895; re-en. Sec. 2511, Rev. C. 1907; re-en. Sec. 2003, R.C.M. 1921; Cal. Pol. C. Sec. 3629; re-en. Sec. 2003, R.C.M. 1935; amd. Sec. 5, Ch. 405, L. 1973; amd. Sec. 9, Ch. 388, L. 1975; R.C.M. 1947, 84-409; amd. Sec. 4, Ch. 649, L. 1987.

Cross-References

Notice required if Department revises statement valuation, 15-8-601.

15-8-302. Department of revenue to furnish blank forms. (1) The department of revenue must furnish its agents with blank forms of the statements provided for in the preceding section, affixing thereto an affidavit which must be substantially as follows: "I, ..., do swear that I am a resident of the county of .... (naming it) and that my post-office address is ....; that the above list contains a full and correct statement of all property subject to taxation which I or any firm of which I am a member or any corporation, association, or company of which I am president, cashier, secretary, or managing agent owned, claimed, possessed, or controlled at midnight on January 1 last and which is not already assessed this year; that I have not in any manner whatsoever transferred or disposed of any property or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same or of making this statement; and that the debts therein stated as owing by me are justly due and owing to others."

(2) The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation and in other respects must conform substantially to the preceding form.

(3) The time when taxes become delinquent and the time of the meeting of the county tax appeal board must be stated in such form.

History: En. Sec. 15, p. 80, L. 1891; re-en. Sec. 3702, Pol. C. 1895; re-en. Sec. 2512, Rev. C. 1907; re-en. Sec. 2004, R.C.M. 1921; Cal. Pol. C. Sec. 3630; re-en. Sec. 2004, R.C.M. 1935; amd. Sec. 6, Ch. 405, L. 1973; amd. Sec. 10, Ch. 388, L. 1975; R.C.M. 1947, 84-410.

15-8-303. Statement to be completed and returned to department's agent. The agent of the department of revenue may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. The agent must either in person or by mail deliver to the person making the statement a copy of the same, showing any corrections made thereto by the agent.

History: En. Sec. 16, p. 80, L. 1891; re-en. Sec. 3703, Pol. C. 1895; re-en. Sec. 2513, Rev. C. 1907; re-en. Sec. 2005, R.C.M. 1921; Cal. Pol. C. Sec. 3631; re-en. Sec. 2005, R.C.M. 1935; amd. Sec. 7, Ch. 405, L. 1973; R.C.M. 1947, 84-411.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-8-304. Enforcement powers of department. (1) The department of revenue has power to:

(a) require any person in the state to make and subscribe an affidavit, giving his name and place of residence and post-office address;

(b) subpoena and examine any person in relation to any statement furnished to it or which discloses property which is assessable in the state.

(2) The department may exercise this power in any county where the person whom it desires to examine may be found but has no power to require such person to appear before it in any other county than that in which the subpoena is served.

(3) In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken or the statement discloses property in any county other than that in which it is made, the department must, in the respective case, file the affidavit or statement in its office and transmit a copy of the same, certified by it, to its agent in the county in which such residence or property is therein shown to be.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R.C.M. 1921; Cal. Pol. C. Sec. 3632; re-en. Sec. 2006, R.C.M. 1935; amd. Sec. 8, Ch. 405, L. 1973; R.C.M. 1947, 84-412(part).

15-8-305. Repealed. Sec. 4, Ch. 357, L. 1985.

History: En. Sec. 18, p. 82, L. 1891; amd. Sec. 3705, Pol. C. 1895; re-en. Sec. 2515, Rev. C. 1907; re-en. Sec. 2007, R.C.M. 1921; Cal. Pol. C. Sec. 3633; re-en. Sec. 2007, R.C.M. 1935; amd. Sec. 9, Ch. 405, L. 1973; R.C.M. 1947, 84-413.

15-8-306. Property concealed or misrepresented. Upon discovery, any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof to evade taxation must be assessed at not exceeding 10 times its value, and the assessment so made must not be reduced by the county tax appeal board.

History: En. Sec. 33, p. 84, L. 1891; amd. Sec. 3722, Pol. C. 1895; re-en. Sec. 2541, Rev. C. 1907; re-en. Sec. 2033, R.C.M. 1921; Cal. Pol. C. Sec. 3648; re-en. Sec. 2033, R.C.M. 1935; amd. Sec. 18, Ch. 405, L. 1973; R.C.M. 1947, 84-439.

Cross-References

Applicable to horses taken in roundup, 81-4-511.

15-8-307. Land assessment. (1) Land must be assessed in parcels or subdivisions not exceeding 640 acres, and tracts of land containing more than 640 acres which have been sectionized by the United States government must be assessed by sections or fractions of sections.

(2) The department of revenue or its agent must set aside one line in the assessment book for the description of each 640 acres of land or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. It must also set aside a line in the assessment book for the description of each town or city lot, the description to be entered in one column and the value of the lot and any improvements thereon in another column, except that a lot and improvements thereon shall be separately assessed when required under 15-8-111; provided that all of the unimproved lots of the same value, situate in one block or belonging to the same party, may be described and assessed in one line in the manner above provided for each lot. It is the intention hereby that each parcel and lot show in its own line and opposite the description thereof the total value of the same and any improvements thereon.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R.C.M. 1921; Cal. Pol. C. Sec. 3628; re-en. Sec. 2023, R.C.M. 1935; amd. Sec. 13, Ch. 405, L. 1973; amd. Sec. 2, Ch. 436, L. 1975; R.C.M. 1947, 84-429(part).

15-8-308. Assessment not illegal for informality or delay. No assessment or act relating to assessment or collection of taxes is illegal on account of informality or because the same was not completed within the time required by law.

History: En. Sec. 4014, Pol. C. 1895; re-en. Sec. 2732, Rev. C. 1907; re-en. Sec. 2036, R.C.M. 1921; re-en. Sec. 2036, R.C.M. 1935; Cal. Pol. C. Sec. 3885; R.C.M. 1947, 84-442.

15-8-309. Violation and penalty. (1) Every person who refuses to furnish the statement hereinbefore required or to make and subscribe such affidavit respecting his name and place of residence or to appear and testify when requested so to do by the department, as above provided, for each and every refusal and as often as the same is repeated forfeits to the people of the state the sum of $100 to be recovered by action brought in the name of the state in any city or justice's court.

(2) All moneys recovered under the provisions of this section, except moneys paid to a justice's court, must be paid into the treasury of the county in which the property is located.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R.C.M. 1921; Cal. Pol. C. Sec. 3632; re-en. Sec. 2006, R.C.M. 1935; amd. Sec. 8, Ch. 405, L. 1973; R.C.M. 1947, 84-412(part); amd. Sec. 10, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Part 4
Where Property Is Assessed

15-8-401. Consigned property. All personal property consigned for sale to any person within this state from any place out of the state must be assessed as other property.

History: En. Sec. 21, p. 82, L. 1891; re-en. Sec. 3709, Pol. C. 1895; re-en. Sec. 2519, Rev. C. 1907; re-en. Sec. 2011, R.C.M. 1921; Cal. Pol. C. Sec. 3638; re-en. Sec. 2011, R.C.M. 1935; R.C.M. 1947, 84-417.

15-8-402. Property of a firm or corporation. The property of every firm and corporation must be assessed in the county where the property is situate and must be assessed in the name of the firm or corporation.

History: En. Sec. 23, p. 82, L. 1891; re-en. Sec. 3711, Pol. C. 1895; re-en. Sec. 2521, Rev. C. 1907; re-en. Sec. 2013, R.C.M. 1921; Cal. Pol. C. Sec. 3641; re-en. 2013, R.C.M. 1935; R.C.M. 1947, 84-419.

15-8-403. Capital stock and franchises of corporations. The capital stock and franchises of corporations and persons, except as otherwise provided, must be listed and taxed in the county, town, or district where the principal office or place of business of such corporation or person is located; if there be no principal office or place of business in the state, then at the place in the state where any such corporation or person transacts business.

History: En. Sec. 3713, Pol. C. 1895; re-en. Sec. 2523, Rev. C. 1907; re-en. Sec. 2015, R.C.M. 1921; re-en. Sec. 2015, R.C.M. 1935; R.C.M. 1947, 84-421.

15-8-404. Property of particular types of firms. (1) The personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where his business is carried on.

(2) The personal property of express, transportation, and stage companies must be listed and assessed in the county, town, or district where such property is usually kept.

(3) The personal property and franchises of gas and water companies must be listed and assessed in the county, town, or district where the principal works are located. Gas and water mains and pipes laid in roads, streets, or alleys are personal property.

History: En. Secs. 25, 26, 27, 28, p. 83, L. 1891; re-en. Secs. 3714, 3715, 3716, 3717, Pol. C. 1895; re-en. Secs. 2524, 2525, 2526, 2527, Rev. C. 1907; re-en. Secs. 2016, 2017, 2018, 2019, R.C.M. 1921; re-en. Secs. 2016, 2017, 2018, 2019, R.C.M. 1935; R.C.M. 1947, 84-422, 84-423, 84-424, 84-425; amd. Sec. 5, Ch. 649, L. 1987.

15-8-405. Street railroads, bridges, and ferries. Street railroads and bridges and ferries and their franchises owned by persons or corporations must be listed and assessed in the county, town, or district where such property or any portion thereof is located, and the track of the railroad and the bridge are personal property.

History: En. Sec. 29, p. 83, L. 1891; re-en. Sec. 3718, Pol. C. 1895; re-en. Sec. 2528, Rev. C. 1907; re-en. Sec. 2020, R.C.M. 1921; re-en. Sec. 2020, R.C.M. 1935; R.C.M. 1947, 84-426.

15-8-406. Assessment of public utilities in one county. Railroads operated or situated in one county; telegraph, telephone, and electric light lines and similar properties situated in one county and their franchises; and canals, ditches, and flumes situated in one county and the franchises of the same must be listed and assessed in the county in which such property is located, and the department of revenue must require the owner of such property or his agent or any officer of a corporation owning the same to make a verified statement containing a list of the number of miles such property is operated or situated in the county and the value thereof.

History: En. Sec. 30, p. 83, L. 1891; re-en. Sec. 3719, Pol. C. 1895; re-en. Sec. 2529, Rev. C. 1907; amd. Sec. 1, Ch. 24, L. 1921; re-en. Sec. 2021, R.C.M. 1921; re-en. Sec. 2021, R.C.M. 1935; amd. Sec. 12, Ch. 405, L. 1973; R.C.M. 1947, 84-427.

Cross-References

Central assessment of public utilities, Title 15, ch. 23, part 3.

15-8-407. Railroads and other franchises. (1) The franchise, roadway, roadbed, rails, rolling stock, and all other operating property of all railroads operated in more than one county or more than one state must be assessed by the department of revenue as hereinafter provided.

(2) Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business.

History: En. Sec. 11, p. 76, L. 1891; re-en. Sec. 3696, Pol. C. 1895; re-en. Sec. 2508, Rev. C. 1907; re-en. Sec. 2022, R.C.M. 1921; Cal. Pol. C. Sec. 3628; re-en. Sec. 2022, R.C.M. 1935; amd. Sec. 4, Ch. 516, L. 1973; R.C.M. 1947, 84-428; amd. Sec. 3, Ch. 686, L. 1979.

Cross-References

Central assessment of railroads, Title 15, ch. 23, part 2.

15-8-408. Personal property. Personal property, other than livestock, subject to taxation or a fee in lieu of tax in the state shall be taxable in the taxing jurisdiction where it is located on January 1, whether or not the same is owned, claimed, or possessed by the person, as defined in 15-1-102, owning, claiming, or possessing it on January 1.

History: En. Sec. 158, p. 121, L. 1891; re-en. Sec. 3943, Pol. C. 1895; amd. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2686, Rev. C. 1907; re-en. Sec. 2247, R.C.M. 1921; Cal. Pol. C. Sec. 3823; amd. Sec. 1, Ch. 122, L. 1933; re-en. Sec. 2247, R.C.M. 1935; amd. Sec. 15, Ch. 388, L. 1975; R.C.M. 1947, 84-4209(part); amd. Sec. 6, Ch. 598, L. 1989.

Cross-References

Definition of "personal property", 15-1-101.

Migratory personal property, Title 15, ch. 24, part 3.

15-8-409. Property not otherwise specified. All other taxable property must be assessed in the county, city, or district in which it is situated.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R.C.M. 1921; Cal. Pol. C. Sec. 3628; re-en. Sec. 2023, R.C.M. 1935; amd. Sec. 13, Ch. 405, L. 1973; amd. Sec. 2, Ch. 436, L. 1975; R.C.M. 1947, 84-429(part).

Part 5

To Whom Property Is Assessed

Part Cross-References

Owner of life estate under duty to pay taxes, 70-16-103.

15-8-501. Assessment of unknown or absent owners. (1) If the owner or claimant of any property not listed by another person is absent or unknown, the department must make an estimate of the value of such property.

(2) If the name of the absent owner is known to the department, the property must be assessed in his name; if unknown, the property must be assessed to unknown owners.

History: En. Secs. 19, 20, p. 82, L. 1891; re-en. Secs. 3706, 3707, Pol. C. 1895; re-en. Secs. 2516, 2517, Rev. C. 1907; re-en. Secs. 2008, 2009, R.C.M. 1921; Cal. Pol. C. Secs. 3635, 3636; re-en. Secs. 2008, 2009, R.C.M. 1935; amd. Secs. 10, 11, Ch. 405, L. 1973; R.C.M. 1947, 84-414, 84-415.

15-8-502. Representative status to be designated. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name and the assessment entered on a separate line from his individual assessment.

History: En. Sec. 22, p. 82, L. 1891; re-en. Sec. 3710, Pol. C. 1895; re-en. Sec. 2520, Rev. C. 1907; re-en. Sec. 2012, R.C.M. 1921; Cal. Pol. C. Sec. 3639; re-en. Sec. 2012, R.C.M. 1935; R.C.M. 1947, 84-418.

15-8-503. Undistributed property of deceased persons. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators, and a payment of taxes made by either binds all the parties in interest for their equal proportions.

History: En. Sec. 24, p. 82, L. 1891; re-en. Sec. 3712, Pol. C. 1895; re-en. Sec. 2522, Rev. C. 1907; re-en. Sec. 2014, R.C.M. 1921; Cal. Pol. C. Sec. 3642; re-en. Sec. 2014, R.C.M. 1935; R.C.M. 1947, 84-420.

15-8-504. Property and money in litigation. Money and property in litigation in possession of a county treasurer or of a court or a clerk thereof or receiver must be assessed to such treasurer, clerk, or receiver and the taxes paid thereon under the direction of the court.

History: En. Sec. 32, p. 84, L. 1891; re-en. Sec. 3721, Pol. C. 1895; re-en. Sec. 2540, Rev. C. 1907; re-en. Sec. 2032, R.C.M. 1921; Cal. Pol. C. Sec. 3647; re-en. Sec. 2032, R.C.M. 1935; R.C.M. 1947, 84-438.

15-8-505 through 15-8-510 reserved.

15-8-511. Undivided interest in common elements of condominium project. (1) Each unit of a condominium project is considered a parcel of real property subject to separate assessment and taxation. Each unit owner must be assessed for the unit owner's percentage of undivided interest in elements of the condominium project, except parks, owned in common by the unit owners. The percentage of undivided interest stated in a unit declaration is the figure to be used in assessing common elements under this section.

(2) Unless otherwise agreed by all the unit owners, for purposes of assessment common elements include:

(a) the land on which the building is located, except any portion thereof included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety and normally in common use.

History: En. Sec. 1, Ch. 452, L. 1985.

Cross-References

Unit Ownership Act, Title 70, ch. 23.

15-8-512. Common elements serving residential or commercial development. (1) Each lot in a residential or commercial development, regardless of whether improved or unimproved, is considered a parcel of real property subject to separate assessment and taxation. Each lot owner is assessed on a pro rata basis for elements of the development serving the lots in common, such as recreational areas, pathways, sidewalks, private roads, street lights, main communication cables, main gas or electric lines, community water and sewer systems, or any other common element enumerated in 15-8-511, but not for park areas that serve the lots.

(2) The assessment provisions of subsection (1) are not negated by the existence or formation of a contract between the developer and lot purchasers or an agreement among lot purchasers that would attempt to obligate the developer or an association of lot owners to pay taxes on the common elements.

History: En. Sec. 2, Ch. 452, L. 1985.

Cross-References

Unit Ownership Act, Title 70, ch. 23.

Part 6

Assessment Revision

15-8-601. Assessment revision — conference for review. (1) (a) Except as provided in subsection (1)(b), whenever the department of revenue discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the same provided the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All such revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(b) Within the time limits set by 15-23-116, whenever the department discovers property subject to assessment under Title 15, chapter 23, that has escaped assessment, been erroneously assessed, or been omitted from taxation, the department may issue a revised assessment to the person, firm, or corporation who owned the property at the time it escaped assessment, was erroneously assessed, or was omitted from taxation, regardless of the ownership of the property at the time of the department's revised assessment.

(2) Whenever the department or its agent proposes to increase the valuation of locally assessed property above the value reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section. Revised assessments of centrally assessed property are subject to review pursuant to 15-1-211.

(3) (a) Notice of revised assessment pursuant to this section shall be made by the department or its agent by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. If the property is locally assessed, the notice shall include opportunity for a conference on the matter, at the request of the person interested, not less than 15 or more than 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment review conference, which are public records.

(c) Following an assessment review conference or expiration of opportunity therefor, the department shall order such assessment as it considers proper. Any party to the conference aggrieved by the action of the department may appeal to the county tax appeal board at its next meeting.

(4) The department must record in a book to be kept for that purpose all changes, corrections, and orders made by it and must direct its agent to enter upon the assessment book all changes and corrections made by it.

(5) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department.

History: (1) thru (3), (5)En. Sec. 11, Ch. 3, L. 1923; re-en. Sec. 2122.11, R.C.M. 1935; amd. Sec. 56, Ch. 405, L. 1973; amd. Sec. 4, Ch. 155, L. 1977; Sec. 84-711, R.C.M. 1947; (4)Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2582, Rev. C. 1907; re-en. Sec. 2121, R.C.M. 1921; Cal. Pol. C. Sec. 3682; re-en. Sec. 2121, R.C.M. 1935; amd. Sec. 44, Ch. 405, L. 1973; Sec. 84-610, R.C.M. 1947; R.C.M. 1947, 84-610, 84-711; amd. Sec. 1, Ch. 37, L. 1991; amd. Sec. 5, Ch. 811, L. 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

State Tax Appeal Board, Title 15, ch. 2.

County Tax Appeal Board, Title 15, ch. 15, part 1.

Failure to file report on centrally assessed property, 15-23-104.

Transmission of statement of revised assessment of centrally assessed property, 15-23-107.

Part 7
Assessment and Map Books

15-8-701. Assessment book — definition — listing property in. (1) Unless the context clearly indicates otherwise, the term "assessment book" means the record kept in each county by the agent of the department of revenue and which contains the information described in subsection (3). The term includes, in a county wherein the assessment book is kept on a computer system, the information on the system analogous to the information described in subsection (3).

(2) The form of the assessment book must be as directed by the department.

(3) The department must prepare an assessment book with appropriate headings, alphabetically arranged, in which must be listed all property within the state and in which must be specified, in separate columns under the appropriate head:

(a) the name of the person to whom the property is assessed;

(b) land, by township, range, section or fractional section, and when such land is not a United States land division or subdivision, by metes and bounds or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract 640 acres, locality, and the improvements thereon;

(c) city and town lots, naming the city or town and the number of the lot and block, according to the system of numbering in such city or town, and the value of same with improvements thereon;

(d) all taxable personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment;

(e) the assessed value of real estate other than city or town lots;

(f) the assessed value of city and town lots with improvements thereon, except that a lot and improvements thereon shall be separately listed when required under 15-8-111;

(g) the assessed value of improvements on real estate assessed to persons other than the owners of the real estate. Taxable improvements owned by a person, located upon land exempt from taxation, shall, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value, however, may be assessed against the exempt land, nor under any circumstances may the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

(h) the assessed value of all taxable personal property;

(i) the school, road, and other revenue districts in which each piece of property assessed is situated;

(j) the total assessed value of all property.

History: (1)En. 84-502.1 by Sec. 27, Ch. 405, L. 1973; Sec, 84-502.1, R.C.M. 1947; (2)En. Sec. 34, p. 84, L. 1891; re-en. Sec. 3724, Pol. C. 1895; re-en. Sec. 2543, Rev. C. 1907; re-en. Sec. 2048, R.C.M. 1921; Cal. Pol. C. Sec. 3650; re-en. Sec. 2048, R.C.M. 1935; amd. Sec. 26, Ch. 405, L. 1973; amd. Sec. 2, Ch. 209, 1975; amd. Sec. 3, Ch. 436, L. 1975; amd. Sec. 5, Ch. 126, L. 1977; Sec. 84-501, R.C.M. 1947; R.C.M. 1947, 84-501, 84-502.1; amd. Sec. 1, Ch. 253, L. 1985.

Cross-References

Book to show property situated in cities and towns, 7-6-4409.

Tax-exempt property, Title 15, ch. 6, part 2.

Irrigation district assessments added to book, 85-7-2136.

Drainage district assessments added to book, 85-8-601.

15-8-702. Persons desiring to be listed. Lands once described on the assessment book need not be described a second time, but any person claiming the same and desiring to be assessed therefor may have the person's name inserted with that of the person to whom such land is assessed.

History: En. Sec. 3731, Pol. C. 1895; re-en. Sec. 2550, Rev. C. 1907; re-en. Sec. 2055, R.C.M. 1921; Cal. Pol. C. Sec. 3657; re-en. Sec. 2055, R.C.M. 1935; amd. Sec. 1, Ch. 283, L. 1975; R.C.M. 1947, 84-508; amd. Sec. 2, Ch. 366, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 366 deleted (2) that provided: "(2) When the owner of one or more parcels of real property conveys a portion of his interests to a buyer in a recorded transaction, the buyer may require the county treasurer to accept payment from the buyer on such portion of the taxes already levied against such property as may then be due and payable. The department of revenue or its agent shall cooperate with and assist the buyer and the county treasurer in keeping necessary records of the separation or division of a parcel or parcels listed together on the assessment lists"; and made minor changes in style.

15-8-703. Repealed. Sec. 1, Ch. 17, L. 1985.

History: (1)En. Sec. 3851, Pol. C. 1895; re-en. Sec. 2615, Rev. C. 1907; re-en. Sec. 2167, R.C.M. 1921; re-en. Sec. 2167, R.C.M. 1935; Sec. 84-4012, R.C.M. 1947; (2)En. Sec. 4019, Pol. C. 1895; re-en. Sec. 2737, Rev. C. 1907; re-en. Sec. 2168, R.C.M. 1921; re-en. Sec. 2168, R.C.M. 1935; amd. Sec. 81, Ch. 405, L. 1973; Sec. 84-4013, R.C.M. 1947; R.C.M. 1947, 84-4012, 84-4013.

15-8-704. Map book. The department of revenue must make a plat of the various blocks within any incorporated city or town in a map book and mark thereon in each subdivision the name of the person to whom it is assessed.

History: En. Sec. 3727, Pol. C. 1895; re-en. Sec. 2546, Rev. C. 1907; re-en. Sec. 2051, R.C.M. 1921; re-en. Sec. 2051, R.C.M. 1935; amd. Sec. 28, Ch. 405, L. 1973; R.C.M. 1947, 84-504.

15-8-705. Assessment and map book delivered to and kept by clerk. As soon as completed, the assessment book, together with the map book and statements, must be delivered to the county clerk, who must immediately give notice thereof and of the time the county tax appeal board will meet to consider protests concerning assessments, by publication in a newspaper if any is printed in the county, if none, then in such manner as the board may direct. In the meantime, the assessment book must remain in his office for the inspection of all persons interested.

History: En. Sec. 37, p. 86, L. 1891; re-en. Sec. 3728, Pol. C. 1895; re-en. Sec. 2547, Rev. C. 1907; re-en. Sec. 2052, R.C.M. 1921; Cal. Pol. C. Sec. 3654; re-en. Sec. 2052, R.C.M. 1935; amd. Sec. 29, Ch. 405, L. 1973; R.C.M. 1947, 84-505.

Cross-References

Delivery to certain municipalities upon request, 7-6-4410.

Addition of valuations required prior to delivery to County Clerk and Recorder, 15-10-301.

Delivery to County Superintendent of Schools and City or Town Clerk showing assessed value and taxable value within each district and city or town, 20-9-122.

15-8-706. Statement by agent to the department. (1) On the second Monday in July in each year, the agent of the department of revenue in each county must transmit to the department a statement showing:

(a) the several kinds of personal property;

(b) the average and total value of each kind;

(c) the number of livestock;

(d) when practicable, the separate value of each class of land, specifying the classes and the number of acres in each.

(2) An agent of the department who purposely or negligently fails to perform his duty under this section or a deputy or member of the agent's staff delegated such duty who purposely or negligently fails to perform such duty is guilty of official misconduct under 45-7-401.

History: (1)En. Sec. 3729, Pol. C. 1895; re-en. Sec. 2548, Rev. C. 1907; re-en. Sec. 2053, R.C.M. 1921; Cal. Pol. C. Sec. 3655; re-en. Sec. 2053, R.C.M. 1935; amd. Sec. 30, Ch. 405, L. 1973; Sec. 84-506, R.C.M. 1947; (2)En. Sec. 3730, Pol. C. 1895; re-en. Sec. 2549, Rev. C. 1907; re-en. Sec. 2054, R.C.M. 1921; Cal. Pol. C. Sec. 3656; re-en. Sec. 2054, R.C.M. 1935; amd. Sec. 31, Ch. 405, L. 1973; Sec. 84-507, R.C.M. 1947; R.C.M. 1947, 84-506, 84-507; amd. Sec. 1, Ch. 225, L. 1983; amd. Sec. 7, Ch. 598, L. 1989.

Cross-References

Fine not to be paid to the county, 15-1-105.

County Assessor as agent of Department, 15-8-102.

15-8-707. Correction of defects in form of assessment book. (1) At any time after the original assessment is made and prior to a sale for delinquent taxes, omissions, errors, or defects in form in the assessment book may be corrected by the:

(a) department of revenue or its agent; or

(b) county assessor or county treasurer with verification from the department.

(2) If the correction involves an assessment of property that is the subject of pending litigation, the consent of the county attorney must be obtained before any correction may be made.

History: En. Sec. 193, p. 127, L. 1891; re-en. Sec. 4010, Pol. C. 1895; re-en. Sec. 2728, Rev. C. 1907; re-en. Sec. 2058, R.C.M. 1921; Cal. Pol. C. Sec. 3881; re-en. Sec. 2058, R.C.M. 1935; amd. Sec. 34, Ch. 405, L. 1973; R.C.M. 1947, 84-511; amd. Sec. 1, Ch. 477, L. 1979; amd. Sec. 2, Ch. 17, L. 1985.

Cross-References

County Assessor as agent of Department, 15-8-102.

15-8-708. Omissions in delinquent lists — correction by publication. (1) When the omission, error, or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended or notice of the correction may be given in a supplementary publication.

(2) The publication must be made in the same manner as the original publication and for not less than 1 week.

History: (1)En. Sec. 194, p. 127, L. 1891; re-en. Sec. 4011, Pol. C. 1895; re-en. Sec. 2729, Rev. C. 1907; re-en. Sec. 2059, R.C.M. 1921; Cal. Pol. C. Sec. 3882; re-en. Sec. 2059, R.C.M. 1935; Sec. 84-512, R.C.M. 1947; (2)En. Sec. 195, p. 127, L. 1891; re-en. Sec. 4012, Pol. C. 1895; re-en. Sec. 2730, Rev. C. 1907; re-en. Sec. 2060, R.C.M. 1921; Cal. Pol. C. Sec. 3883; re-en. Sec. 2060, R.C.M. 1935; Sec. 84-513, R.C.M. 1947; R.C.M. 1947, 84-512, 84-513.

15-8-709. Statement of changes to be sent to county clerk. The department of revenue shall transmit to each county clerk a statement of the changes made by the department in the assessment book of the county or any assessment contained therein, which shall be prima facie evidence of the regularity of all proceedings of the department resulting in the action which is the subject matter of the statement.

History: En. Sec. 12, Ch. 3, L. 1923; re-en. Sec. 2122.12, R.C.M. 1935; amd. Sec. 57, Ch. 405, L. 1973; R.C.M. 1947, 84-712.

15-8-710. Assessment and delinquent books prima facie evidence. The assessment book or delinquent list or a copy thereof certified by the county clerk and recorder showing unpaid taxes against any person or property is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of the law in relation to the assessment and levy of such taxes have been complied with.

History: En. Sec. 133, p. 115, L. 1891; re-en. Sec. 3900, Pol. C. 1895; re-en. Sec. 2656, Rev. C. 1907; re-en. Sec. 2216, R.C.M. 1921; Cal. Pol. C. Sec. 3789; re-en. Sec. 2216, R.C.M. 1935; R.C.M. 1947, 84-4171; amd. Sec. 3, Ch. 17, L. 1985.

CHAPTER 9

EQUALIZATION

Part 1 — General Provisions

15-9-101. Department to equalize valuations — hearing.
15-9-102. Agent to be present — statement of property not assessed.
15-9-103. Department to use records in equalizing.

Chapter Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Part 1

General Provisions

Part Cross-References

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

15-9-101. Department to equalize valuations — hearing. (1) The department of revenue shall adjust and equalize the valuation of taxable property among the several counties and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of agents of the department; change, increase, or decrease valuations made by its agents; and exercise such authority and do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(2) The department may hold a public hearing to determine the value of any class of property in any county and shall have authority to raise or lower the value of any class of property on the basis of testimony adduced at such hearing.

(3) Upon the hearing of the application, the department may subpoena such witnesses, hear and take such evidence in relation to the subject pending as in its discretion it may deem proper.

History: (1)En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977;

amd. Sec. 53, Ch. 566, L. 1977; Sec. 84-708.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 187, L. 1933; re-en. Sec. 2116.1, R.C.M. 1935; amd. Sec. 40, Ch. 405, L. 1973; Sec. 84-605, R.C.M. 1947; (3)Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2576, Rev. C. 1907; re-en. Sec. 2117, R.C.M. 1921; Cal. Pol. C. Sec. 3676; re-en. Sec. 2117, R.C.M. 1935; amd. Sec. 6, Ch. 516, L. 1973; Sec. 84-606, R.C.M. 1947; R.C.M. 1947, 84-605, 84-606, 84-708.1(3).

Cross-References

Applicable to assessment of property in cities and towns, 7-6-4411.

County Assessor as agent of Department, 15-8-102.

15-9-102. Agent to be present — statement of property not assessed. During the hearing of the department, the agent of the state who assessed the property whose testimony is needed must be present and may make any statement or introduce and examine witnesses on questions before the department and shall, when requested by the department or any party to the proceeding, furnish to the department a written statement showing the basis for his valuation of the property under consideration at the hearing and shall, when requested by the department or any party to the proceeding, furnish to the department a written statement showing the basis for his valuation of any comparable property in the vicinity of the property under consideration at the hearing. At the meeting the agent shall present to the department a statement setting forth all property which has escaped assessment or which, by reason of erroneous reports or otherwise, has been assessed for less than its correct value. Thereupon it shall be the duty of the department immediately to investigate the statement, and in the event that any property owner has been assessed for property at a smaller amount or at a less valuation than should properly have been given, the department shall order the agent to correct such assessment in the manner provided for the correction of assessments by the department.

History: En. Sec. 3785, Pol. C. 1895; re-en. Sec. 2577, Rev. C. 1907; amd. Sec. 1, Ch. 53, L. 1921; re-en. Sec. 2118, R.C.M. 1921; Cal. Pol. C. Sec. 3677; re-en. Sec. 2118, R.C.M. 1935; amd. Sec. 1, Ch. 102, L. 1951; amd. Sec. 41, Ch. 405, L. 1973; R.C.M. 1947, 84-607.

Cross-References

County Assessor as agent of the Department, 15-8-102.

Assessment revision, Title 15, ch. 8, part 6.

15-9-103. Department to use records in equalizing. The department of revenue must use the abstract and all other information it may gain from the records of the county clerk or elsewhere in equalizing the assessment of the property of each county and may require entry upon the assessment book of any property which has not been assessed. Any assessment made as prescribed in this section has the same force and effect as if made before the delivery of the assessment book to the county clerk.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2580, Rev. C. 1907; re-en. Sec. 2119, R.C.M. 1921; Cal. Pol. C. Sec. 3679; re-en. Sec. 2119, R.C.M. 1935; amd. Sec. 42, Ch. 405, L. 1973; R.C.M. 1947, 84-608.

CHAPTER 10

PROPERTY TAX LEVIES

Part 1 — Statewide Levies

15-10-101. Levy to balance budget.
15-10-102. Department to compute budget levy.
15-10-103. Repealed.
15-10-104. Failure of county commissioners to levy.
15-10-105. Terminated.
15-10-106. Tax levy for university system.

Part 2 — Statement of Levies

15-10-201. Tax levies to be made in mills and tenths and hundredths of mills.
15-10-202. Certification of taxable values and millage rates.
15-10-203. Increase of tax revenue — advertisement of intention and public hearing required.
15-10-204. Resolution or ordinance for increase over certified millage.
15-10-205. Approval and copies of resolution or ordinance.
15-10-206. Exceptions for decisions of tax appeal boards.
15-10-207. Additional millage increase — new notice required.
15-10-208. Increase over legal maximum not authorized — reductions permitted.

Part 3 — Entry of Taxes

15-10-301. Department to enter valuations.
15-10-302. County clerk — duplicate statement.
15-10-303. Statement to be transmitted to state auditor and department of revenue.
15-10-304. County clerk and recorder to follow directions of department, county or state tax appeal boards.
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Part 4 — Limitation on Property Taxes

15-10-401. Declaration of policy.
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15-10-403 through 15-10-405 reserved.
15-10-406. Limitation of applicability.
15-10-407 through 15-10-410 reserved.
15-10-411. Declaration of policy — clarification — extension to all property classes.
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Chapter Cross-References

Tax purposes, Art. VIII, sec. 1, Mont. Const.

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Equal valuation, Art. VIII, sec. 4, Mont. Const.

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Part 1
Statewide Levies

Part Cross-References

Statewide levy on livestock for enforcement of stock laws, 15-24-921, 15-24-922, 15-24-925.

Disposal of federal money received in lieu of taxes, 17-3-305.

Statewide levy on livestock for predator control, 81-7-104, 81-7-118.

Privilege and license tax on operators and producers of oil and gas, 82-11-131.

15-10-101. Levy to balance budget. There must be levied at each session of the legislature upon all property in the state liable to taxation a sufficient sum to realize the amount necessary to meet the appropriations made for the 2 succeeding fiscal years and for the payment of deficiencies if any have occurred in the previous fiscal year or years. Such levy must be made for each fiscal year separately and must not exceed 2 1/2 mills on each dollar of valuation. The fiscal year commences on July 1.

History: En. Sec. 80, p. 104, L. 1891; amd. Sec. 3820, Pol. C. 1895; re-en. Sec. 2593, Rev. C. 1907; re-en. Sec. 2147, R.C.M. 1921; re-en. Sec. 2147, R.C.M. 1935; R.C.M. 1947, 84-3801.

Cross-References

Balanced budget, Art. VIII, sec. 9, Mont. Const.

15-10-102. Department to compute budget levy. The department of revenue must, for state purposes for each fiscal year, fix an ad valorem rate of taxation upon each $100 of taxable property of the state, after allowing 6% for delinquencies in the taxes and for costs of collection thereof, as will raise a sufficient amount to meet the levy of the legislature for each fiscal year.

History: En. Sec. 3824, Pol. C. 1895; re-en. Sec. 2597, Rev. C. 1907; re-en. Sec. 2149, R.C.M. 1921; Cal. Pol. C. Sec. 3713; re-en. Sec. 2149, R.C.M. 1935; amd. Sec. 147, Ch. 516, L. 1973; amd. Sec. 2, Ch. 345, L. 1977; R.C.M. 1947, 84-3803.

15-10-103. Repealed. Sec. 56, Ch. 767, L. 1991.

History: En. Sec. 84, p. 105, L. 1891; re-en. Sec. 3830, Pol. C. 1895; re-en. Sec. 2603, Rev. C. 1907; re-en. Sec. 2155, R.C.M. 1921; Cal. Pol. C. Sec. 3719; re-en. Sec. 2155, R.C.M. 1935; R.C.M. 1947, 84-3810.

15-10-104. Failure of county commissioners to levy. The action of the department of revenue in fixing the rate of taxation for state purposes is, in the absence of action by the board of county commissioners, a valid levy of the rate so fixed and imposes upon the county commissioners and all other officers charged with the performance of any duties under the revenue law the same obligations as if the board of county commissioners had made the levy at the proper time.

History: En. Sec. 3826, Pol. C. 1895; re-en. Sec. 2599, Rev. C. 1907; re-en. Sec. 2151, R.C.M. 1921; Cal. Pol. C. Sec. 3715; re-en. Sec. 2151, R.C.M. 1935; amd. Sec. 148, Ch. 516, L. 1973; R.C.M. 1947, 84-3806.

15-10-105. Terminated. Sec. 2, Ch. 582, L. 1979.

History: En. Sec. 1, Ch. 582, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

15-10-106. *(Temporary)* **Tax levy for university system.** There is levied upon the taxable value of all real and personal property subject to taxation in the state of Montana 6 mills or so much thereof as is necessary to raise the amount appropriated by the legislature from the state special revenue fund for the support, maintenance, and improvement of the Montana university system, as provided in referendum measure No. 106 passed by vote of the people at the general election held November 8, 1988. The funds raised from the levy must be deposited in the state special revenue fund. *(Terminates January 1, 1999—sec. 3, Ch. 588, L. 1989.)*

History: En. Sec. 1, Ch. 588, L. 1989.

Part 2
Statement of Levies

Part Cross-References

Resort community tax, 7-6-4462.

15-10-201. Tax levies to be made in mills and tenths and hundredths of mills. Every board of county commissioners, city or town council or commission, and every other board or commission authorized by law to make or fix tax levies for any purpose shall make and fix every such levy in mills and tenths and hundredths of mills.

History: En. Sec. 1, Ch. 123, L. 1935; re-en. Sec. 2148.1, R.C.M. 1935; R.C.M. 1947, 84-3802.

Cross-References

Fixing of county tax levy, 7-6-2321.

Fixing of municipal tax levy, 7-6-4232.

15-10-202. Certification of taxable values and millage rates. At the time that the assessment roll is prepared and published, the department of revenue or its agent shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department or its agent shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the value of deletions from the previous assessment roll. Exclusive of new construction, improvements, and deletions, the department or its agent shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department or its agent shall use 95% of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll.

History: En. 84-7202 by Sec. 2, Ch. 286, L. 1974; R.C.M. 1947, 84-7202; amd. Sec. 4, Ch. 726, L. 1985; amd. Sec. 5, Ch. 26, Sp. L. June 1986; amd. Sec. 2, Ch. 9, L. 1989.

15-10-203. Increase of tax revenue — advertisement of intention and public hearing required. (1) No local taxing authority may budget an increased amount of ad valorem tax revenue in excess of the property tax revenue it received the previous fiscal year exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll unless it adopts a resolution to budget additional property tax revenue. Prior to adoption of the resolution, the taxing authority shall hold a public hearing for the purpose of receiving comments on its intention to budget increased property tax revenue. The taxing authority shall advertise notice of the public hearing as specified in subsection (2). The public hearing may be held in conjunction with the tentative budget hearing or any other budget hearing that may be required by law.

(2) The taxing authority shall advertise its intent to budget an increase in property tax revenue in a newspaper meeting the requirements of 7-1-4127, except the newspaper may not be primarily in the business of publishing legal advertisements. If there is no newspaper in the county, in addition to being posted as required in 7-1-4127, the advertisement must be published in one or more newspapers of general circulation widely subscribed to by the residents of the county. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must meet the notice requirements of 7-1-4128. The advertisement must be published with at least the following information:

NOTICE OF BUDGET INCREASE FROM PROPERTY TAXES

The (name of the taxing authority) intends to budget an increase in revenue from property taxation by (percentage of increase in property tax revenue from previous fiscal year) percent.

All concerned persons are invited to attend a public hearing on budgeting the increased property tax revenue to be held on (date and time) at (meeting place).

A decision on budgeting the increased property tax revenue will be made after considering comments made at this hearing.

For further information please contact: (name, address, and phone number of person who can be contacted for further information).

History: En. 84-7203 by Sec. 3, Ch. 286, L. 1974; R.C.M. 1947, 84-7203; amd. Sec. 6, Ch. 581, L. 1979; amd. Sec. 39, Ch. 370, L. 1987; amd. Sec. 1, Ch. 817, L. 1991.

15-10-204. Resolution or ordinance for increase over certified millage. No millage in excess of the department of revenue's certified millage may be levied until a resolution or ordinance is approved by the governing board of the taxing authority, which resolution or ordinance must be approved by the taxing authority according to the following procedure:

(1) The taxing authority shall publish notice of its intent to exceed the department's certified millage in the same manner that it gives notice of hearings on its preliminary or proposed budget for the forthcoming fiscal year. The notice must state that the taxing authority will meet on a day, at a time and place fixed in the notice, which must be approximately 7 days after the day that the notice is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the tentative budget as required by law.

(2) After the public hearing has been held in accordance with the above procedures, the taxing authority may adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If the resolution or ordinance adopting such millage rate is not approved on the day of the public hearing, the day, time, and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than 2 weeks from the public hearing, the taxing authority must again publish notice in the same manner as provided in subsection (1).

History: **En. 84-7204 by Sec. 4, Ch. 286, L. 1974; amd. Sec. 2, Ch. 354, L. 1977; R.C.M. 1947, 84-7204; amd. Sec. 7, Ch. 581, L. 1979; amd. Sec. 40, Ch. 370, L. 1987.**

15-10-205. Approval and copies of resolution or ordinance. The resolution or ordinance approved in the manner provided for in this part shall be forwarded to the assessor, treasurer, and the department of revenue. No millage in excess of the department's certified millage can be levied until the resolution or ordinance to levy required in subsections (1) and (2) of 15-10-204 is approved by the governing board of the taxing authority and submitted to the assessor and the department.

History: **En. 84-7205 by Sec. 5, Ch. 286, L. 1974; R.C.M. 1947, 84-7205.**

15-10-206. Exceptions for decisions of tax appeal boards. The department or its agent shall notify each taxing authority of any change in the assessment roll which results from actions by the state or county tax appeal boards. An increase in the taxing authority's millage above that certified by the department or its agent or adopted by resolution or ordinance of the governing body of the taxing authority which is required solely by a reduction of the assessment roll by the state or county tax appeal board may be adopted without further notice.

History: **En. 84-7206 by Sec. 6, Ch. 286, L. 1974; R.C.M. 1947, 84-7206; amd. Sec. 3, Ch. 9, L. 1989.**

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

County Tax Appeal Board, Title 15, ch. 15, part 1.

15-10-207. Additional millage increase — new notice required. If after the initial notice provided for in 15-10-203 the taxing authority determines that it requires a greater millage or fails to act in the specified period, it must give notice anew under 15-10-203 and proceed as required in 15-10-204.

History: **En. 84-7207 by Sec. 7, Ch. 286, L. 1974; R.C.M. 1947, 84-7207; amd. Sec. 8, Ch. 581, L. 1979.**

15-10-208. Increase over legal maximum not authorized — reductions permitted. Nothing contained in this part may serve to extend or authorize any millage in excess of the maximum millage permitted by law or prevent the reduction of millage.

History: **En. 84-7208 by Sec. 8, Ch. 286, L. 1974; R.C.M. 1947, 84-7208; amd. Sec. 9, Ch. 581, L. 1979.**

Part 3
Entry of Taxes

15-10-301. Department to enter valuations. Before delivering the assessment book to the county clerk and recorder as required by 15-8-705, the department of revenue or its agent must proceed to add up the valuations and enter the total valuation of each kind of property and the total valuation of all property on the assessment book. The column of acres must show the total acreage of the county.

History: **En. Sec. 85, p. 105, L. 1891; re-en. Sec. 3840, Pol. C. 1895; re-en. Sec. 2604, Rev. C. 1907; re-en. Sec. 2156, R.C.M. 1921; Cal. Pol. C. Sec. 3727; re-en. Sec. 2156, R.C.M. 1935; amd. Sec. 1, Ch. 167, L. 1943; amd. Sec. 76, Ch. 405, L. 1973; R.C.M. 1947, 84-4001.**

15-10-302. County clerk — duplicate statement. The county clerk and recorder shall, on or before the second Monday in August of each year, prepare from the assessment book of such year, as corrected by the department of revenue or its agent, duplicate statements showing in separate columns:

(1) the total value of all property;

(2) the value of real estate, including mining claims, stated separately;

(3) the value of the improvements thereon;

(4) the value of taxable personal property;

(5) the number of acres of land and the number of mining claims, stated separately.

History: En. Sec. 86, p. 105, L. 1891; re-en. Sec. 3841, Pol. C. 1895; re-en. Sec. 2605, Rev. C. 1907; re-en. Sec. 2157, R.C.M. 1921; Cal. Pol. C. Sec. 3728; re-en. Sec. 2157, R.C.M. 1935; amd. Sec. 77, Ch. 405, L. 1973; amd. Sec. 7, Ch. 126, L. 1977; R.C.M. 1947, 84-4002.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-10-303. Statement to be transmitted to state auditor and department of revenue. The county clerk and recorder must, as soon as such statements are prepared, transmit by mail, one to the state auditor and one to the department of revenue.

History: En. Sec. 87, p. 105, L. 1891; re-en. Sec. 3842, Pol. C. 1895; re-en. Sec. 2606, Rev. C. 1907; re-en. Sec. 2158, R.C.M. 1921; Cal. Pol. C. Sec. 3729; re-en. Sec. 2158, R.C.M. 1935; amd. Sec. 149, Ch. 516, L. 1973; R.C.M. 1947, 84-4003.

15-10-304. County clerk and recorder to follow directions of department, county or state tax appeal boards. As soon as the county clerk and recorder receives from the department of revenue, county or state tax appeal board a statement of any change or changes made by the department or board in the assessment books of the county or in any assessment therein contained, he must make the corresponding change or changes in the assessment books by entering the same in a column provided with a proper heading in the assessment books, counting any fractional sum when more than 50 cents as $1 and omitting it when less than 50 cents so that the value of any separate assessment shall contain no fractions of a dollar; provided, however, that if such assessment books are not in the possession of the county clerk and recorder at the time he receives any such statement, he must immediately make a copy thereof, attesting the same with his seal of office, and deliver such attested copy to the county or state officer then having possession of such assessment books, and it shall be the duty of such county or state officer to immediately make the corresponding change or changes in such assessment in the manner herein provided.

History: En. Sec. 88, p. 106, L. 1891; re-en. Sec. 3843, Pol. C. 1895; re-en. Sec. 2607, Rev. C. 1907; re-en. Sec. 2159, R.C.M. 1921; Cal. Pol. C. Sec. 3730; re-en. Sec. 2159, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1929; amd. Sec. 78, Ch. 405, L. 1973; R.C.M. 1947, 84-4004; amd. Sec. 2, Ch. 357, L. 1985.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

County Tax Appeal Board, Title 15, ch. 15, part 1.

15-10-305. Department to compute and enter taxes — affidavit. The department of revenue or its agent must then compute and enter in a separate money column in the assessment book the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated and foot up the columns showing the total amount of such taxes and the columns of total value of property in the county and shall attach thereto his affidavit, by him subscribed as follows and shall on or before the second Monday of October deliver the completed assessment book to the county clerk and recorder:

"I, ..., an agent of the department of revenue, do swear that I have reckoned the respective sums due as taxes and have added up the columns of valuations, taxes, and acreage as required by law, and the assessment book to which this affidavit is affixed is full, true, and correct and made in the manner prescribed by law.".

History: En. Sec. 89, p. 106, L. 1891; re-en. Sec. 3844, Pol. C. 1895; re-en. Sec. 2608, Rev. C. 1907; re-en. Sec. 2160, R.C.M. 1921; Cal. Pol. C. Sec. 3731; re-en. Sec. 2160, R.C.M. 1935; amd. Sec. 3, Ch. 167, L. 1943; amd. Sec. 79, Ch. 405, L. 1973; R.C.M. 1947, 84-4005.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-10-306. County clerk and recorder to attach affidavit to book. (1) Within 5 days after the second Monday in August, the county clerk must attach to the book the following affidavit and deliver the book to the department of revenue or its agent:

"I, ..., county clerk and recorder of the county of ...., do swear that I received the assessment book of the taxable property of the county from the department of revenue or its agent, with its affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the county and state tax appeal boards.".

(2) The county clerk and recorder must verify, by his affidavit attached thereto, all statements made by him under the provisions of this code.

History: (1)En. Sec. 90, p. 107, L. 1891; re-en. Sec. 3845, Pol. C. 1895; re-en. Sec. 2609, Rev. C. 1907; re-en. Sec. 2161, R.C.M. 1921; Cal. Pol. C. Sec. 3732; amd. Sec. 9, Ch. 96, L. 1923; re-en. Sec. 2161, R.C.M. 1935; amd. Sec. 2, Ch. 167, L. 1943; amd. Sec. 80, Ch. 405, L. 1973; Sec. 84-4006, R.C.M. 1947; (2)En. Sec. 93, p. 107, L. 1891; re-en. Sec. 3848, Pol. C. 1895; re-en. Sec. 2612, Rev. C. 1907; re-en. Sec. 2164, R.C.M. 1921; Cal. Pol. C. Sec. 3735; re-en. Sec. 2164, R.C.M. 1935; Sec. 84-4008, R.C.M. 1947; R.C.M. 1947, 84-4006, 84-4008.

Cross-References

Affidavit required upon delivery of municipal assessment book, 7-6-4412.

County Assessor as agent of Department, 15-8-102.

County Clerk to include statement showing for each school district and each city or town the assessed value and total taxable value after amendments and corrections, 20-9-122.

15-10-307. Clerk and recorder to deliver book to treasurer. On or before the third Monday of October, the county clerk and recorder must charge the treasurer with the full amount of taxes levied and deliver the original assessment book to the county treasurer.

History: En. Sec. 92, p. 107, L. 1891; re-en. Sec. 3847, Pol. C. 1895; re-en. Sec. 2611, Rev. C. 1907; re-en. Sec. 2163, R.C.M. 1921; Cal. Pol. C. Sec. 3734; amd. Sec. 10, Ch. 96, L. 1923; re-en. Sec. 2163, R.C.M. 1935; amd. Sec. 4, Ch. 167, L. 1943; R.C.M. 1947, 84-4007.

Cross-References

Preparation and delivery of book to City Treasurer, 7-6-4412.

Irrigation district assessments added to book prior to delivery, 85-7-2136.

Drainage district assessments added to book prior to delivery, 85-8-601.

15-10-308. Transfer of assessment book to new treasurer. If the original assessment book or the delinquent tax list is transferred from one collector to another, the county clerk and recorder must credit the one and charge the other with the amount then outstanding on the tax book.

History: En. Sec. 94, p. 107, L. 1891; re-en. Sec. 3849, Pol. C. 1895; re-en. Sec. 2613, Rev. C. 1907; re-en. Sec. 2165, R.C.M. 1921; Cal. Pol. C. Sec. 3736; amd. Sec. 11, Ch. 96, L. 1923; re-en. Sec. 2165, R.C.M. 1935; R.C.M. 1947, 84-4009.

15-10-309 through 15-10-320 reserved.

15-10-321. Limitation on levy and computation of tax — new taxing jurisdictions. The department of revenue may not be required to levy or compute a tax for any new taxing jurisdiction created or for any change in an existing jurisdiction unless formally notified of its creation or change by January 1 of the year in which the taxes are to be levied.

History: En. 84-3811 by Sec. 1, Ch. 349, L. 1977; R.C.M. 1947, 84-3811; amd. Sec. 1, Ch. 76, L. 1981.

Part 4

Limitation on Property Taxes

15-10-401. Declaration of policy. (1) The state of Montana's reliance on the taxation of property to support education and local government has placed an unreasonable burden on the owners of classes three, four, six, nine, twelve, and fourteen property, as those classes are defined in Title 15, chapter 6, part 1.

(2) The legislature's failure to give local governments and local school districts the flexibility to develop alternative sources of revenue will only lead to increases in the tax burden on the already overburdened property taxpayer.

(3) The legislature is the appropriate forum to make the difficult and complex decisions to develop:

(a) a tax system that is fair to property taxpayers; and

(b) a method of providing adequate funding for local government and education.

(4) The legislature has failed in its responsibility to taxpayers, education, and local government to relieve the tax burden on property classes three, four, six, nine, twelve, and fourteen.

(5) The people of the state of Montana declare it is the policy of the state of Montana that no further property tax increases be imposed on property classes three, four, six, nine, twelve, and fourteen.

History: En. Sec. 1, I.M. No. 105, approved Nov. 4, 1986.

15-10-402. Property tax limited to 1986 levels. (1) Except as provided in subsections (2) and (3), the amount of taxes levied on property described in 15-6-133, 15-6-134, and 15-6-136 may not, for any taxing jurisdiction, exceed the amount levied for taxable year 1986.

(2) The limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, chapter 12, part 21; special improvement districts, Title 7, chapter 12, part 41; elementary and high school districts, Title 20; juvenile detention programs authorized under 7-6-502; or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) are subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill.

History: En. Sec. 2, I.M. No. 105, approved Nov. 4, 1986; amd. Sec. 6, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 745, L. 1991; amd. Sec. 11, Ch. 773, L. 1991; amd. Sec. 7, Ch. 267, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 267 in (1) deleted reference to 15-6-144; and made minor changes in style. Amendment effective April 2, 1993.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

15-10-403 through 15-10-405 reserved.

15-10-406. Limitation of applicability. The minimum tax imposed by 15-16-118 is not affected by the provisions of this part.

History: En. Sec. 2, Ch. 474, L. 1991.

15-10-407 through 15-10-410 reserved.

15-10-411. Declaration of policy — clarification — extension to all property classes. Section 15-10-401 is interpreted, clarified, and extended as follows:

(1) In order to avoid constitutional challenges based on discriminatory treatment of taxpayers in tax classes not enumerated in 15-10-401 and 15-10-402, the limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The policy declaration in 15-10-401(5) that no further property tax increases be imposed is interpreted to mean no further increase may be made in the tax rate applied to property in each class in 1986.

(3) No new class of property may be created solely to circumvent the policy underlying 15-10-401 and 15-10-402. If a new class of property is created in order to afford preferential treatment to a category of property, the taxable rate that applies may not exceed the rate at which such property was taxed in 1986.

History: En. Sec. 1, Ch. 654, L. 1987.

15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes. Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied

a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not prohibit a further increase in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements.

(4) The limitation on the amount of taxes levied does not prohibit a further increase in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in class four is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency

in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) except as provided in subsection (8)(a), the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but the mills levied may not exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) (a) Except as provided in subsection (8)(b), if a taxing unit has levied additional mills under subsection (7)(a) to compensate for a decrease in taxable valuation, it may continue to levy additional mills to equal the revenue from property taxes for the 1986 tax year when the taxing unit's taxable valuation is greater than 95% but less than 100% of the taxing unit's taxable valuation in tax year 1986.

(b) When the taxable valuation of a taxing unit that levied additional mills under subsection (7)(a) or (8)(a) is equal to or greater than the taxing unit's taxable valuation in tax year 1986, it may not levy additional mills to compensate for a subsequent decrease in taxable valuation unless the conditions of subsection (7)(a) are satisfied.

(9) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (9);

(i) levies for economic development authorized pursuant to 90-5-112(4);

(j) levies authorized under 7-6-502 for juvenile detention programs;

(k) levies authorized under 76-15-531 and 76-15-532 for conservation district special administrative assessments;

(l) elementary and high school districts; and

(m) voted poor fund levies authorized under 53-2-322.

(10) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(11) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:

(i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2); and

(iii) a rail authority, as provided in Title 7, chapter 14, part 16, authorized by a board of county commissioners. A levy for the support of a rail authority may not exceed the 6-mill limit established in 7-14-1632.

(12) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(13) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402.

(14) A taxing jurisdiction that included special improvement district revolving fund levies in the limitation on the amount of taxes levied prior to April 22, 1993, may continue to include the amount of the levies within the dollar amount due in each taxing unit for the 1986 tax year even if the necessity for the revolving fund has diminished and the levy authority has been transferred.

History: En. Sec. 2, Ch. 654, L. 1987; amd. Sec. 2, Ch. 213, L. 1989; amd. Sec. 3, Ch. 636, L. 1989; amd. Sec. 1, Ch. 662, L. 1989; amd. Sec. 1, Ch. 5, Sp. L. June 1989; amd. Sec. 1, Ch. 6, Sp. L. June 1989; amd. Sec. 1, Ch. 7, Sp. L. June 1989; amd. Sec. 3, Ch. 11, Sp. L.

June 1989; amd. Sec. 2, Ch. 668, L. 1991; amd. Sec. 9, Ch. 680, L. 1991; amd. Sec. 4, Ch. 745, L. 1991; amd. Sec. 12, Ch. 773, L. 1991; amd. Sec. 8, Ch. 267, L. 1993; amd. Sec. 20, Ch. 333, L. 1993; amd. Sec. 1, Ch. 424, L. 1993; amd. Sec. 1, Ch. 483, L. 1993; amd. Sec. 30, Ch. 561, L. 1993; amd. Sec. 6, Ch. 573, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 267 in (5) and (6) deleted reference to class eleven property; and made minor changes in style. Amendment effective April 2, 1993.

Chapter 333 inserted (11)(b)(iii) relating to a rail authority and providing that a levy for it may not exceed the 6-mill limit in 7-14-1632; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 424 in (7)(a), at beginning, inserted exception clause; inserted (8) authorizing a taxing unit to continue to levy additional mills within certain limitations; in (9)(h) substituted "subsection (9)" for "subsection (8)"; and made minor changes in style. Amendment effective April 20, 1993.

Chapter 483 inserted (14) providing that a taxing jurisdiction that included special improvement district revolving fund levies in the limitation on the amount of taxes levied prior to April 22, 1993, may continue to include the levy amount within the dollar amount due in each taxing unit for the 1986 tax year even if the necessity for the revolving fund has diminished and the levy authority has been transferred. Amendment effective April 22, 1993.

Chapter 561 inserted (9)(m) relating to voted poor fund levies authorized under 53-2-322. Amendment effective July 1, 1993.

Chapter 573 inserted (9)(k) relating to levies for conservation district special administrative assessments. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval [approved April 2, 1993] and applies to tax years beginning on or after January 1, 1994."

Effective Date — Retroactive Applicability: Section 2, Ch. 424, L. 1993, provided: "[This act] is effective on passage and approval [approved April 20, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

CHAPTERS 11 THROUGH 14

RESERVED

CHAPTER 15

PROPERTY TAX APPEALS

Part 1 — County Tax Appeal Board

15-15-101. County tax appeal board — meetings and compensation.
15-15-102. Application for reduction in valuation.
15-15-103. Examination of applicant — failure to hear application.
15-15-104. Appeal to state tax appeal board.
15-15-105. Repealed.
15-15-106. Repealed.

Chapter Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

State Tax Appeal Board, Title 15, ch. 2.

Appeal by person aggrieved by state debt collection procedure, 17-4-111.

Part 1
County Tax Appeal Board

15-15-101. County tax appeal board — meetings and compensation. (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board shall be residents of the county in which they serve. They shall receive compensation of $45 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled. It must continue in session from time to time to hear protests concerning assessments made by the department of revenue until the business of hearing protests is disposed of, but, except as provided in 15-2-201, not later than 60 days after the department of revenue or its agent:

(a) has mailed notice of classification and appraisal to all property owners and purchasers under contracts for deed as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners and purchasers under contracts for deed.

(3) In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for the hearings. The notice must be published in a newspaper if any is printed in the county or, if none, then in the manner that the county tax appeal board directs. The notice must be published at least 7 days prior to the first meeting of the county tax appeal board.

(4) Challenges to a department of revenue rule governing the assessment of property or to an assessment procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-1-406.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2572, Rev. C. 1907; re-en. Sec. 2113, R.C.M. 1921; Cal. Pol. C. Sec. 3672; re-en. Sec. 2113, R.C.M. 1935; amd. Sec. 36, Ch. 405, L. 1973; amd. Sec. 1, Ch. 38, L. 1974; amd. Sec. 1, Ch. 285, L. 1975; amd. Sec. 1, Ch. 355, L. 1977; amd. Sec. 25, Ch. 453, L. 1977; R.C.M. 1947, 84-601; amd. Sec. 1, Ch. 630, L. 1979; amd. Sec. 2, Ch. 502, L. 1981; amd. Sec. 5, Ch. 526, L. 1981; amd. Sec. 1, Ch. 216, L. 1983; amd. Sec. 13, Ch. 526, L. 1983; amd. Sec. 1, Ch. 242, L. 1991; amd. Sec. 9, Ch. 594, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 594 at end of (4) substituted "15-1-406" for "15-2-307 through 15-2-310"; and made minor changes in style.

Cross-References

Appeal on increase of value over owner's statement, 15-1-404.

No reduction allowed on assessment of concealed property, 15-8-306.

15-15-102. Application for reduction in valuation. The valuation of property may not be reduced by the county tax appeal board unless either the taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board. The application must be filed on or before the first Monday in June or 15 days after receiving either a notice of classification and appraisal or determination after review under 15-7-102(3) from the department of revenue or its agent, whichever is later. If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. The application must state the post-office address of the applicant, specifically describe the property involved, and state the facts upon which it is claimed the reduction should be made.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R.C.M. 1921; Cal. Pol. C. Sec. 3674; amd. Sec. 2, Ch. 187, L. 1933; re-en. Sec. 2115, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957; amd. Sec. 38, Ch. 405, L. 1973; amd. Sec. 1, Ch. 360, L. 1975; amd. Sec. 3, Ch. 155, L. 1977; amd. Sec. 3, Ch. 355, L. 1977; R.C.M. 1947, 84-603; amd. Sec. 2, Ch. 630, L. 1979; amd. Sec. 4, Ch. 9, L. 1989; amd. Sec. 3, Ch. 227, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 227 in second sentence, after "appraisal", inserted "or determination after review under 15-7-102(3)" and inserted third sentence requiring review in the next tax year if the Department's determination after review is not made in time to allow county tax appeal board review during the current tax year; and made minor changes in style. Amendment effective March 30, 1993.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

Cross-References

Department to defend property tax appeals, 15-8-115.

15-15-103. Examination of applicant — failure to hear application. (1) Before the county tax appeal board grants any application or makes any reduction applied for, it must examine on oath the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in 15-15-102, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses upon such hearing must be taken in shorthand or by stenotype or electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded, together with all exhibits, to the state tax appeal board. The date of hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days thereafter. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) If a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The county treasurer shall enter the appraisal or classification sought in the application in the assessment book. An application is not automatically granted for the following appeals:

(a) those listed in 15-2-302; and

(b) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current 60-day session.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R.C.M. 1921; Cal. Pol. C. Sec. 3675; amd. Sec. 3, Ch. 187, L. 1933; re-en. Sec. 2116, R.C.M. 1935; amd. Sec. 3, Ch. 196, L. 1957; amd. Sec. 39, Ch. 405, L. 1973; amd. Sec. 2, Ch. 38, L. 1974; amd. Sec. 4, Ch. 355, L. 1977; R.C.M. 1947, 84-604; amd. Sec. 3, Ch. 630, L. 1979; (2)En. Sec. 4, Ch. 630, L. 1979; amd. Sec. 3, Ch. 471, L. 1987; amd. Sec. 4, Ch. 227, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 227 in (2) inserted language concerning appeals; inserted (2)(b) concerning nonautomatic untimely appeals; and made minor changes in style. Amendment effective March 30, 1993.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

15-15-104. Appeal to state tax appeal board. Any person or the department of revenue in behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board under 15-2-301.

History: Ap. p. Sec. 9, Ch. 3, L. 1923; re-en. Sec. 2122.9, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974; amd. Sec. 1, Ch. 155, L. 1977; amd. Sec. 1, Ch. 249, L. 1977; Sec. 84-709, R.C.M. 1947; Ap. p. by Code Commissioner, 1979; R.C.M. 1947, 84-709(part).

15-15-105. Repealed. Sec. 7, Ch. 501, L. 1981.

History: En. 84-709.2 by Sec. 2, Ch. 404, L. 1975; R.C.M. 1947, 84-709.2(part).

15-15-106. Repealed. Sec. 7, Ch. 501, L. 1981.

History: En. 84-709.3 by Sec. 3, Ch. 404, L. 1975; R.C.M. 1947, 84-709.3(part).

CHAPTER 16

COLLECTION OF PROPERTY TAXES

Part 1 — Notice and Payment

15-16-101. Treasurer to publish notice — manner of publication.
15-16-102. Time for payment — penalty for delinquency.
15-16-103. Special improvement districts with annual interest payments — collection of special assessments for all special improvements.
15-16-104. Entry of payment — receipt.
15-16-105. When property assessed more than once.

15-16-106 through 15-16-110 reserved.
15-16-111. Personal property — duty of department.
15-16-112. Department report of personal property in assessment book.
15-16-113. Personal property — duty of treasurer — penalty.
15-16-114. Rate of taxation — personal property.
15-16-115. Treasurer's record of personal property taxes paid.
15-16-116. Repealed.
15-16-117. Personal property — treasurer's duty to collect certain taxes.
15-16-118. Minimum tax payment — limitation of appeal.
15-16-119 and 15-16-120 reserved.
15-16-121. Payment of interim production and new production taxes.

Part 2 — Special Payment Provisions

15-16-201. Tax prepayment — new industrial facilities.
15-16-202. Boats, snowmobiles, and motor vehicles — payment of current and back taxes and fees.
15-16-203. Assessment of property previously exempt.

Part 3 — Reporting Delinquent Taxes

15-16-301. Delinquent list — list of taxes suspended or canceled — real property.
15-16-302. Tabulation and transmittal of real property delinquent list.
15-16-303. Treasurer charged with delinquent taxes.
15-16-304. Repealed.
15-16-305. Disposition of delinquent list.

Part 4 — Liens and Limitations

15-16-401. Tax due as a judgment or lien.
15-16-402. Tax on personal property lien on realty — separate assessment — filing of mortgage satisfaction.
15-16-403. Lien on real property and improvements.
15-16-404. County lien on moneys of taxpayer.

Part 5 — Collection by Suit

15-16-501. Repealed.
15-16-502. Repealed.
15-16-503. Collection by suit of personal property taxes when taxpayer moves to another county.
15-16-504. Evidence at trial.
15-16-505. Repealed.

Part 6 — Refunds

15-16-601. Repealed.
15-16-602. Concurrent remedies.
15-16-603. Refund of taxes — limitations on refunds.
15-16-604. Judicial review of tax refund denials.
15-16-605. Payment of refunds.
15-16-606 through 15-16-610 reserved.
15-16-611. Reduction of property tax for property destroyed by natural disaster — proration of taxes on replaced property.
15-16-612. Refund of tax paid.
15-16-613. Refund of certain taxes paid on migratory property.

Part 7 — Cancellations

15-16-701. Personal property taxes five years delinquent — list.
15-16-702. Cancellation of taxes and obligations — filing of lists.
15-16-703. Adjustment of accounts after cancellation.
15-16-704. Certain unpaid taxes uncollectible — stricken from records.

Part 8 — Suspensions

15-16-801. Payment of suspended delinquent property taxes.

15-16-802. Suspension of certain state taxes.
15-16-803. Suspension of certain local government taxes.

Chapter Cross-References

Suspension of property taxes for persons in military services — collection procedures abated, 10-1-606.

Suspension or cancellation of delinquent property taxes on commercial property, 15-24-1701 through 15-24-1703.

State or county authorized to acquire property by taxation, 70-1-204.

Payment of taxes required to prove adverse possession, 70-19-411.

Taxes, assessments, and liens as encumbrance on real property, 70-20-305.

Part 1

Notice and Payment

15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the assessment book, the county treasurer must publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on November 30 next thereafter or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on May 31 next thereafter and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) He must send to the last-known address of each taxpayer written notice, postage prepaid, showing the amount of taxes and assessments due the current year and the amount due and delinquent for other years. The written notice shall include:

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

(c) the value of each mill in that county;

(d) itemized city services and special improvement district assessments collected by the county;

(e) the number of the school district in which the property is located; and

(f) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(d) ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any of his liabilities. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

History: Ap. p. Sec. 3860, Pol. C. 1895; amd. Sec. 1, p. 97, L. 1899; re-en. Sec. 2616, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1917; re-en. Sec. 2169, R.C.M. 1921; Cal. Pol. C. Sec. 3746; amd. Sec. 2, Ch. 96, L. 1923; amd. Sec. 2, Ch. 67, L. 1931; re-en. Sec. 2169, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1977; Sec. 84-4101, R.C.M. 1947; Ap. p. Sec. 3861, Pol. C. 1895; re-en. Sec. 2617, Rev. C. 1907; re-en. Sec. 2170, R.C.M. 1921; Cal. Pol. C. Sec. 3749; re-en. Sec. 2170, R.C.M. 1935; Sec. 84-4105, R.C.M. 1947; R.C.M. 1947, 84-4101, 84-4105; amd. Sec. 1, Ch. 492, L. 1981; amd. Sec. 1, Ch. 576, L. 1981; amd. Sec. 1, Ch. 6, Sp. L. 1981; amd. Sec. 29, Ch. 587, L. 1987.

Cross-References

Treasurer as collector of taxes, 7-6-2503.

Delivery of book to Treasurer, 15-10-307.

Definition of "school district", 20-15-403.

Hail insurance assessment included with statement, 80-2-224.

Copy of water rights filing notice included with statement, 85-2-213.

15-16-102. Time for payment — penalty for delinquency. Except as provided in 15-16-802 and 15-16-803 and unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103 and assessments made on interim production and new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121, shall be payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, then the amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after the delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after the delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(4) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(5) A taxpayer may pay his current year taxes without paying delinquent taxes. The county treasurer must accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

History: En. Sec. 1, Ch. 96, L. 1923; amd. Sec. 1, Ch. 79, L. 1929; amd. Sec. 1, Ch. 67, L. 1931; amd. Sec. 4, Ch. 158, L. 1933; Sec. 1(a) amd. Sec. 1, Ch. 1, Ex. L. 1933; re-en. Sec. 2169.2, R.C.M. 1935; R.C.M. 1947, 84-4103; amd. Sec. 2, Ch. 165, L. 1979; amd. Sec. 4, Ch. 527, L. 1981; amd. Sec. 2, Ch. 576, L. 1981; amd. Sec. 2, Ch. 6, Sp. L. 1981; amd. Sec. 19, Ch. 695, L. 1985; amd. Sec. 1, Ch. 69, L. 1987; amd. Sec. 30, Ch. 587, L. 1987; amd. Sec. 8, Ch. 655, L. 1987; amd. Sec. 14, Ch. 449, L. 1989; amd. Sec. 1, Ch. 631, L. 1989; amd. Sec. 3, Ch. 699, L. 1989; amd. Sec. 1, Ch. 704, L. 1989.

Cross-References

County Treasurer to collect city and town taxes, 7-6-4413.

Definition of "improvements", 15-1-101.

Reduction of tax for destroyed property, 15-16-611.

Suspension of taxes, Title 15, ch. 16, part 8.

Applicable to payment of tax on net proceeds and royalties of mines, 15-23-507.

Applicable to payment of tax on metal mines, 15-23-804.

Delinquent taxpayer ineligible for hail insurance program, 80-2-207.

Collection of irrigation district assessments, 85-7-2136.

Collection of drainage district assessments, 85-8-601.

Collection of conservancy district assessments, 85-9-604.

15-16-103. Special improvement districts with annual interest payments — collection of special assessments for all special improvements. (1) Special assessments or installments of special assessments made for special improvements in towns and cities, the bonds for which annual interest payments have been specified and that were issued after July 1, 1981, and that have been duly and regularly made and levied by resolution according to law, shall be payable as follows:

(a) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year. If the taxes are not paid on or before that date, they are subject to the same interest and penalty for nonpayment as delinquent property taxes under 15-16-102. The penalty and interest may be waived by resolution of the city council, as provided in 15-16-102(6).

(b) One-half of the taxes are payable on or before 5 p.m. on May 31 of each year. If the taxes are not paid on or before that date, they are subject to the same interest and penalty for nonpayment as delinquent property taxes under 15-16-102. The penalty and interest may be waived by resolution of the city council, as provided in 15-16-102(6).

(2) The collection of special assessments or installments of special assessments made for special improvements in towns and cities are as provided by 7-12-4181.

History: En. Sec. 1, Ch. 96, L. 1923; amd. Sec. 1, Ch. 79, L. 1929; amd. Sec. 1, Ch. 67, L. 1931; amd. Sec. 4, Ch. 158, L. 1933; re-en. Sec. 2169.3, R.C.M. 1935; R.C.M. 1947, 84-4104; amd. Sec. 5, Ch. 527, L. 1981; amd. Sec. 15, Ch. 449, L. 1989.

Cross-References

Penalty and interest on delinquent taxes, 15-16-102.

15-16-104. Entry of payment — receipt. (1) The county treasurer must note the date and the amount of the payment of any tax in the assessment book opposite the name of the person paying.

(2) (a) Except as provided in subsection (2)(b), he must give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

(b) If the payment is received through the mail or by any electronic means, the county treasurer must issue a receipt only on request of the person paying the tax. If the county treasurer issues a receipt, it must contain the information specified in subsection (2)(a).

History: (1)En. Sec. 3862, Pol. C. 1895; re-en. Sec. 2618, Rev. C. 1907; re-en. Sec. 2171, R.C.M. 1921; Cal. Pol. C. Sec. 3750; amd. Sec. 3, Ch. 96, L. 1923; re-en. Sec. 2171, R.C.M. 1935; Sec. 84-4106, R.C.M. 1947; (2)En. Sec. 97, p. 108, L. 1891; re-en. Sec. 3863, Pol. C. 1895; re-en. Sec. 2619, Rev. C. 1907; re-en. Sec. 2172, R.C.M. 1921; Cal. Pol. C. Sec. 3751;

re-en. Sec. 2172, R.C.M. 1935; Sec. 84-4107, R.C.M. 1947; R.C.M. 1947, 84-4106, 84-4107; amd. Sec. 2, Ch. 599, L. 1987.

15-16-105. When property assessed more than once. When the treasurer discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due and make return of the facts under affidavit to the county clerk and recorder.

History: En. Sec. 146, p. 117, L. 1891; re-en. Sec. 3914, Pol. C. 1895; re-en. Sec. 2670, Rev. C. 1907; re-en. Sec. 2223, R.C.M. 1921; Cal. Pol. C. Sec. 3805; re-en. Sec. 2223, R.C.M. 1935; R.C.M. 1947, 84-4178.

15-16-106 through 15-16-110 reserved.

15-16-111. Personal property — duty of department. (1) It is the duty of the department of revenue or its agent, upon discovery of any personal property in the county the taxes upon which are not a lien upon real property sufficient to secure the payment of such taxes, to immediately and in any event not more than 5 days thereafter make a report to the treasurer, setting forth the nature, kind, description, and character of such property in such a definite manner that the treasurer can identify the same, the amount and assessed valuation of such property, where the same is located, the amount of taxes due thereon, and the name and address of the owner, claimant, or other person in possession of the same.

(2) Where such personal property is located in any city or town which has provided by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, the department also and at the same time shall furnish to the city treasurer or town clerk a duplicate of the notice to the county treasurer. For the purpose of determining the taxes due on personal property, the department or its agent must use the levy made during the previous year.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2683, Rev. C. 1907; re-en. Sec. 2238, R.C.M. 1921; Cal. Pol. C. Sec. 3820; amd. Sec. 1, Ch. 102, L. 1923; amd. Sec. 1, Ch. 143, L. 1929; re-en. Sec. 2238, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1939; amd. Sec. 1, Ch. 136, L. 1943; amd. Sec. 1, Ch. 23, L. 1951; amd. Sec. 82, Ch. 405, L. 1973; R.C.M. 1947, 84-4201; amd. Sec. 31, Ch. 587, L. 1987.

Cross-References

Definition of "personal property", 15-1-101.

County Assessor as agent of the Department, 15-8-102.

Applies to migratory personal property, 15-24-302.

Sale of property on execution, Title 25, ch. 13, part 7.

Lessee of state land subject to personal property taxes, 77-6-114.

15-16-112. Department report of personal property in assessment book. The department of revenue or its agent must note on the assessment book, opposite the name of each person owning, claiming, or possessing personal property which is reported to the treasurer under 15-16-111, the fact that the report was made to the treasurer and the date when the report was made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2251, R.C.M. 1921; re-en. Sec. 2251, R.C.M. 1935; amd. Sec. 84, Ch. 405, L. 1973; R.C.M. 1947, 84-4211; amd. Sec. 32, Ch. 587, L. 1987.

Cross-References

Definition of "personal property", 15-1-101.

Applies to migratory personal property, 15-24-302.

15-16-113. Personal property — duty of treasurer — penalty. (1) The county treasurer shall collect taxes on all personal property and, in the case provided in 15-16-111, shall immediately upon receipt of the report prescribed by 15-16-111 notify the person or persons against whom the tax is assessed and any person who has a properly perfected security interest of record with the department of justice that the amount of the tax is due and payable at the county treasurer's office.

(2) The county treasurer shall, at the time of receiving the report and in any event within 30 days from the receipt of such report, levy upon and take into his possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer and proceed to sell the same in the same manner as property is sold on execution by the sheriff.

(3) The county treasurer shall, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. The sheriff may receive the same fees as he is entitled to in making a seizure and sale as provided in 15-17-911.

(4) The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell such personal property for the taxes levied thereon.

(5) Failure by the sheriff, undersheriff, or deputy sheriff acting as a deputy county treasurer to make the levy and sale results in a levy against the official bond of the sheriff, undersheriff, or deputy sheriff for payment of the delinquent tax.

(6) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; R.C.M. 1947, 84-4202(1), (2); amd. Sec. 33, Ch. 587, L. 1987; amd. Sec. 2, Ch. 631, L. 1989.

Cross-References

Definition of "personal property", 15-1-101.

Sale of personal property, Title 15, ch. 17, part 9.

Sale to collect coal gross proceeds and severance taxes, 15-23-704.

Applies to migratory personal property, 15-24-302.

Statute of Limitations on recovery of property seized by tax collector, 27-2-210.

Injunction to prevent sale or deed for nonpayment of taxes that would lessen the value of an insurer under Insurer's Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

Lessee of state land subject to personal property tax, 77-6-114.

Levy for collection of delinquent taxes owned by municipality or county and taxable as part of an industrial development project, 90-5-110.

15-16-114. Rate of taxation — personal property. (1) All rates of tax levy set by the board of county commissioners on the second Monday in August of each year shall apply permanently to this class of personal property during the ensuing tax year.

(2) The treasurer shall, upon collection of any such taxes, immediately distribute the money so collected to the various and proper funds in his charge.

History: En. Sec. 158, p. 121, L. 1891; re-en. Sec. 3943, Pol. C. 1895; amd. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2686, Rev. C. 1907; re-en. Sec. 2247, R.C.M. 1921; Cal. Pol. C. Sec. 3823; amd. Sec. 1, Ch. 122, L. 1933; re-en. Sec. 2247, R.C.M. 1935; amd. Sec. 15, Ch. 388, L. 1975; R.C.M. 1947, 84-4209(part); amd. Sec. 34, Ch. 587, L. 1987.

Cross-References

Definition of "personal property", 15-1-101.

Applies to migratory personal property, 15-24-302.

15-16-115. Treasurer's record of personal property taxes paid. (1) On or before December 1 of each year, the treasurer shall note on the assessment book, opposite the name of each person from whom taxes have been collected by him in pursuance of the report of the assessor, the amount of taxes received and the date of receipt.

(2) If the taxes have not been collected, the treasurer shall note in the assessment book the reason why collection was not made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2250, R.C.M. 1921; re-en. Sec. 2250, R.C.M. 1935; R.C.M. 1947, 84-4210; amd. Sec. 35, Ch. 587, L. 1987.

Cross-References

Definition of "personal property", 15-1-101.

Applies to migratory personal property, 15-24-302.

15-16-116. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 1, Ch. 81, L. 1923; re-en. Sec. 2165.1, R.C.M. 1935; R.C.M. 1947, 84-4010.

15-16-117. Personal property — treasurer's duty to collect certain taxes. (1) The county treasurer shall demand payment of poor fund taxes, authorized by 53-2-322, and road taxes, authorized by 7-14-2206 or 7-14-2501 through 7-14-2504, of every person liable for the taxes whose name does not appear on the assessment lists. On the neglect or refusal of a person to pay the taxes, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.

(2) These taxes must be added upon the assessment lists to other property taxes of persons paying taxes upon real and personal property and paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of property by the county treasurer for the taxes must be regulated by 15-16-113 and 15-17-911.

(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

History: (1), (2)En. Sec. 1, Ch. 168, L. 1935; re-en. Sec. 2252.1, R.C.M. 1935; Sec. 84-4213, R.C.M. 1947; (3)En. Sec. 2, Ch. 168, L. 1935; re-en. Sec. 2252.2, R.C.M. 1935; Sec. 84-4214, R.C.M. 1947; R.C.M. 1947, 84-4213, 84-4214; amd. Sec. 36, Ch. 587, L. 1987; amd. Sec. 3, Ch. 631, L. 1989; amd. Sec. 4, Ch. 561, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 561 near beginning of (1), after "poor", inserted "fund" and after "authorized by" substituted "53-2-322" for "53-2-321"; and made minor changes in style. Amendment effective July 1, 1993.

15-16-118. Minimum tax payment — limitation of appeal. (1) If the taxes and special assessments due for the current year shown in the written notice sent to the taxpayer as required in 15-16-101(2) are less than $5 or if a tax notice of taxes and special assessments due on personal property is less than $5, the county treasurer shall notify the taxpayer that a minimum tax of $5 is imposed and due. The $5 tax is imposed for purposes of defraying administrative expenses incurred in administering the tax. The difference between the taxes and special assessments and the minimum tax of $5 is to be deposited in the county general fund.

(2) The notification of the $5 minimum tax required by subsection (1) must be made in the notice required in 15-16-101(2) or in the notice of taxes and special assessments due on personal property.

(3) The minimum tax imposed by this section is not affected by the limitation on property taxes contained in Title 15, chapter 10, part 4.

(4) The minimum assessment imposed by this section does not apply to assessments levied against property owned by the state or a county, consolidated local government, city, town, school district, or other governmental entity unless the total assessments levied against all the property owned by the governmental entity are less than $5.

History: En. Sec. 1, Ch. 474, L. 1991; amd. Sec. 1, Ch. 557, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 557 in first sentence of (1), after "15-16-101(2) are", inserted "less than $5 or if a tax notice of taxes and special assessments due on personal property is" and inserted third sentence requiring deposit of the difference between taxes and assessments in the county general fund; in (2), after "15-16-101(2)", inserted "or in the notice of taxes and special assessments due on personal property"; and inserted (4) providing that the minimum assessment does not apply to levies against certain governmental entities unless total assessments are less than $5.

Applicability: Section 2, Ch. 557, L. 1993, provided: "[Section 1] [15-16-118] applies to all tax notices sent to taxpayers after September 30, 1993."

15-16-119 and 15-16-120 reserved.

15-16-121. Payment of interim production and new production taxes. (1) Taxes levied and assessed on interim production or new production under the provisions of Title 15, chapter 23, part 6, must be paid to the county treasurer in quarterly installments. The payments must be made on or before 5 p.m. on the last day of the months of November, February, May, and August.

(2) Unless one-quarter of such taxes are paid on or before 5 p.m. on the last day of the months of November, February, May, and August of each year, any amount so payable is delinquent.

(3) All such delinquent taxes must draw interest at the rate payable on delinquencies under 15-23-115.

(4) There must also be added to the delinquent taxes a penalty at the same rate as provided for delinquencies under 15-23-104.

History: En. Sec. 20, Ch. 695, L. 1985; amd. Sec. 9, Ch. 655, L. 1987.

Cross-References

Payment of taxes generally, 15-16-102.

Part 2
Special Payment Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-16-201. Tax prepayment — new industrial facilities. (1) A person intending to construct or locate a major new industrial facility, as defined in subsection (2) of this section, shall upon request of the board of county commissioners of the county in which the facility is to be located, prepay, when permission is granted to construct or locate by the appropriate governmental agency, an amount equal to three times the estimated property tax due the year the facility is completed. The person who is to prepay under this section shall not be obligated to prepay the entire amount at one time but, upon request of the board of county commissioners of the county, shall prepay only that amount shown to be needed from time to time. To assure this payment or payments, the person who is to prepay shall guarantee to the board of county commissioners and also have a bank or banks guarantee that these amounts will be paid as needed for expenditures created by the impact. When the facility is completed and assessed by the department of revenue, it shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that one-fifth of the amount prepaid shall be allowed as a credit against property taxes in each of the first 5 years after the start of productive operation of the facility.

(2) A major new industrial facility is a manufacturing or mining facility other than a large-scale mineral development as defined in 90-6-302 which will employ on an average annual basis at least 100 people in construction or operation of the facility and which will create a substantial adverse impact on existing state, county, or municipal services.

History: En. 84-41-105 by Sec. 1, Ch. 449, L. 1975; R.C.M. 1947, 84-41-105; amd. Sec. 12, Ch. 617, L. 1981; amd. Sec. 3, Ch. 227, L. 1991.

Cross-References

Property classified as new industrial property under 15-6-135 and 15-6-152 ineligible, 15-6-152.

Coal Board grants for payment of credit, 90-6-205.

15-16-202. Boats, snowmobiles, and motor vehicles — payment of current and back taxes and fees. (1) The fee in lieu of personal property taxes assessed against a boat for the year in which application for decals is made and the immediately previous year must be paid before license decals may be issued pursuant to 23-2-515.

(2) The fee in lieu of tax imposed on a snowmobile for the year in which application for registration is made and the immediately previous year must be paid before a snowmobile may be registered pursuant to 23-2-616.

(3) Except for mobile homes as defined in 15-1-101, the new motor vehicle sales tax and the personal property tax or fee in lieu of tax imposed or assessed against a motor vehicle for the current year and the immediately previous year must be paid before a motor vehicle may be registered or reregistered pursuant to 61-3-303.

(4) The provisions of subsections 1 through 3 do not require payment of the immediately previous year's taxes or fees if such taxes or fees have already been paid.

History: En. Sec. 1, Ch. 421, L. 1987; amd. Sec. 13, Ch. 649, L. 1987.

15-16-203. Assessment of property previously exempt. (1) Real property or improvements exempt from taxation under Title 15, chapter 6, that during a taxable year become the property of a person subject to taxation must be assessed and taxed from the date of change from a nontaxable status to a taxable status.

(2) As provided in subsection (3), the county treasurer shall adjust the tax that would have been due and payable for the current year on the property under 15-16-102 had the property not been exempt.

(3) To determine the amount of tax due for previously exempt property, the county treasurer shall multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property will be in taxable status bears to 365.

(4) If the property has not been assessed and taxed during the taxable year because of exemption, the department of revenue or its agent shall prepare a special assessment for the property and the county treasurer shall determine the amount of taxes that would have been due under subsection (2).

(5) Upon determining the amount of tax due, the county treasurer shall notify the person to whom the tax is assessed, in the same manner as notification is provided under 15-16-101(2), of the amount due and the date or dates on which the taxes due are payable as provided in 15-16-102.

History: En. Sec. 1, Ch. 570, L. 1991.

Part 3

Reporting Delinquent Taxes

15-16-301. Delinquent list — list of taxes suspended or canceled — real property. (1) On the third Monday of December and on the third Monday of June of each year, the county treasurer must make a report to the county clerk and recorder in detail, showing the amount of taxes collected and a complete list of all persons and property then owing taxes.

(2) The county treasurer must make a separate report to the county clerk and recorder showing the amount of taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17, during the 6-month period immediately preceding the date of the report.

(3) The county clerk and recorder shall compare the reports with the books of the county treasurer and shall keep a record of the reports in his office.

History: En. Sec. 101, p. 109, L. 1891; re-en. Sec. 3867, Pol. C. 1895; re-en. Sec. 2623, Rev. C. 1907; re-en. Sec. 2176, R.C.M. 1921; Cal. Pol. C. Sec. 3758; amd. Sec. 5, Ch. 96, L. 1923; re-en. Sec. 2176, R.C.M. 1935; R.C.M. 1947, 84-4111; amd. Sec. 37, Ch. 587, L. 1987; amd. Sec. 4, Ch. 631, L. 1989.

15-16-302. Tabulation and transmittal of real property delinquent list. (1) The county treasurer must, at the time specified in 15-16-301, deliver to the county clerk and recorder a complete delinquent list of all persons and property then owing taxes.

(2) In the list so delivered, all matters and things contained in the assessment book and relating to delinquent persons or property must be set down in numerical or alphabetical order.

(3) The county clerk and recorder must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement

of all taxes due and unpaid, he must total the amount of taxes remaining unpaid, credit the county treasurer therewith, make a final settlement with the treasurer of all taxes charged against the treasurer on the assessment book, and require from the treasurer an immediate account for any existing deficiency.

History: (1)En. Sec. 102, p. 109, L. 1891; re-en. Sec. 3868, Pol. C. 1895; re-en. Sec. 2624, Rev. C. 1907; re-en. Sec. 2177, R.C.M. 1921; re-en. Sec. 2177, R.C.M. 1935; Sec. 84-4112, R.C.M. 1947; (2)En. Sec. 103, p. 109, L. 1891; re-en. Sec. 3869, Pol. C. 1895; re-en. Sec. 2625, Rev. C. 1907; re-en. Sec. 2178, R.C.M. 1921; Cal. Pol. C. Sec. 3760; re-en. Sec. 2178, R.C.M. 1935; Sec. 84-4113, R.C.M. 1947; (3)En. Sec. 104, p. 109, L. 1891; re-en. Sec. 3870, Pol. C. 1895; re-en. Sec. 2626, Rev. C. 1907; re-en. Sec. 2179, R.C.M. 1921; Cal. Pol. C. Sec. 3761; re-en. Sec. 2179, R.C.M. 1935; Sec. 84-4114, R.C.M. 1947; R.C.M. 1947, 84-4112, 84-4113, 84-4114; amd. Sec. 38, Ch. 587, L. 1987.

15-16-303. Treasurer charged with delinquent taxes. After settlement with the county treasurer as prescribed in 15-16-302, the county clerk and recorder must charge the treasurer with the amount of taxes due on the delinquent tax list, minus taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17, and within 3 days thereafter deliver the list, duly certified, to the county treasurer.

History: En. Sec. 105, p. 109, L. 1891; re-en. Sec. 3871, Pol. C. 1895; re-en. Sec. 2627, Rev. C. 1907; re-en. Sec. 2180, R.C.M. 1921; Cal. Pol. C. Sec. 3762; amd. Sec. 6, Ch. 96, L. 1923; re-en. Sec. 2180, R.C.M. 1935; R.C.M. 1947, 84-4115; amd. Sec. 39, Ch. 587, L. 1987; amd. Sec. 5, Ch. 631, L. 1989.

15-16-304. Repealed. Sec. 2, Ch. 201, L. 1985.

History: En. Sec. 106, p. 109, L. 1891; re-en. Sec. 3872, Pol. C. 1895; re-en. Sec. 2628, Rev. C. 1907; re-en. Sec. 2181, R.C.M. 1921; Cal. Pol. C. Sec. 3763; amd. Sec. 7, Ch. 96, L. 1923; re-en. Sec. 2181, R.C.M. 1935; amd. Sec. 150, Ch. 516, L. 1973; R.C.M. 1947, 84-4116.

15-16-305. Disposition of delinquent list. (1) On the third Tuesday of February, the county clerk and recorder must compare the lists with the assessments of persons and property not marked "paid" on the assessment book. If the taxes have been paid, the county clerk and recorder must note the fact in the appropriate column in the assessment book.

(2) The county clerk and recorder must then administer to the county treasurer an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid have been credited in the list with such payment.

(3) The county clerk and recorder must then total the amount of taxes remaining unpaid and credit the treasurer with the amount and have a final settlement with the treasurer. The delinquent list must remain in the county clerk and recorder's office.

(4) At the time mentioned in subsection (1) of this section, the treasurer must make an affidavit, endorsed on the list, that the taxes not marked "paid" have not been paid and that he has not been able to discover any property belonging to or in possession of the persons liable to pay the sum whereof to collect them.

History: (1)En. Sec. 141, p. 116, L. 1891; re-en. Sec. 3908, Pol. C. 1895; re-en. Sec. 2664, Rev. C. 1907; re-en. Sec. 2217, R.C.M. 1921; re-en. Sec. 2217, R.C.M. 1935; Sec. 84-4172, R.C.M. 1947; (2)En. Sec. 142, p. 117, L. 1891; re-en. Sec. 3909, Pol. C. 1895; re-en. Sec. 2665, Rev. C. 1907; re-en. Sec. 2218, R.C.M. 1921; Cal. Pol. C. Sec. 3798; re-en. Sec. 2218, R.C.M. 1935; Sec. 84-4173, R.C.M. 1947; (3)En. Sec. 143, p. 117, L. 1891; re-en. Sec. 3910, Pol. C. 1895; re-en. Sec. 2666, Rev. C. 1907; re-en. Sec. 2219, R.C.M. 1921; Cal. Pol. C. Sec. 3799; re-en. Sec. 2219, R.C.M. 1935; Sec. 84-4174, R.C.M. 1947; (4)En. Sec. 144, p.

117, L. 1891; re-en. Sec. 3911, Pol. C. 1895; re-en. Sec. 2667, Rev. C. 1907; re-en. Sec. 2220, R.C.M. 1921; Cal. Pol. C. Sec. 3800; re-en. Sec. 2220, R.C.M. 1935; Sec. 84-4175, R.C.M. 1947; R.C.M. 1947, 84-4172, 84-4173, 84-4174, 84-4175; amd. Sec. 41, Ch. 370, L. 1987; amd. Sec. 40, Ch. 587, L. 1987.

Part 4

Liens and Limitations

Part Cross-References

Lien for delinquent mines net proceeds tax, 15-23-504, 15-23-508.

Lien for delinquent oil and gas net proceeds tax, 15-23-608.

Lien for delinquent coal gross proceeds and severance taxes, 15-23-704.

Lien for delinquent metal mines gross proceeds tax, 15-23-806.

Paid tax liens more than 7 years old not allowed in consumer credit report, 31-3-112.

Inclusion of tax liens in consumer report for employment purposes, 31-3-126.

Tax lien on insured property destroyed by fire, 33-24-104.

Priority of tax lien to lien for condominium common expenses, 70-23-607.

Priority of lien for fire protection assessment, 76-13-211.

Lien of hail insurance tax levy, 80-2-225.

Priority of lien for reclamation of coal-mine land, 82-4-239.

15-16-401. Tax due as a judgment or lien. Unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made. The county treasurer may issue a writ of execution for delinquent personal property taxes, unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, and deliver the writ to the sheriff. The sheriff shall thereupon proceed upon the writ in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record and shall be entitled to the fees provided for in 15-17-911. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

History: En. Sec. 82, p. 104, L. 1891; re-en. Sec. 3827, Pol. C. 1895; re-en. Sec. 2600, Rev. C. 1907; re-en. Sec. 2152, R.C.M. 1921; Cal. Pol. C. Sec. 3716; re-en. Sec. 2152, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1963; R.C.M. 1947, 84-3807; amd. Sec. 41, Ch. 587, L. 1987; amd. Sec. 6, Ch. 631, L. 1989.

Cross-References

Execution of judgment, Title 25, ch. 13.

Ninety days on return of Writ of Execution, 25-13-404.

15-16-402. Tax on personal property lien on realty — separate assessment — filing of mortgage satisfaction. (1) The tax due upon personal property is a prior lien upon any or all of the personal property. The lien has precedence over any other lien, claim, or demand upon the personal property. Except as provided in subsection (2), the tax upon personal property is also a lien upon the real property of the owner thereof on and after January 1 of each year.

(2) The taxes upon personal property based upon a taxable value up to and including $10,000 are a first and prior lien upon the real property of the owner of the personal property. Taxes upon personal property based upon the taxable value thereof in excess of $10,000 are a first and prior lien upon the

real property of the owner unless the owner or holder of any mortgage or other lien upon the real property appearing of record in the office of the clerk and recorder of the county where the real property is situated, at or before the time the personal property tax attached thereto, has filed a notice as provided in subsection (3). If the notice is filed, the personal property taxes upon the taxable value in excess of $10,000 are not a lien on the owner's real property. The county treasurer shall, at the request of a mortgagee or lienholder, issue a statement of the personal property tax due upon the taxable value up to and including $10,000. Personal property taxes upon a taxable value up to $10,000 may be paid, redeemed from a tax sale as by law provided, or discharged separately from any personal property taxes in excess of such amount. Payment of the taxes upon a taxable value up to $10,000, as provided in this subsection, shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file each year in the office of the county treasurer of said county a notice giving:

(a) the name and address of the mortgagee and holder of the mortgage or lien;

(b) the name of the reputed owner of the land;

(c) the description of the land;

(d) the date of record and expiration of the mortgage or lien;

(e) the amount thereof; and

(f) a statement that he claims the benefit of the provisions of this section.

(4) Such notice shall be ineffectual as to any taxes which shall have become a lien on real property prior to the filing of such notice as provided in subsection (3).

(5) Any owner of a mortgage on real property upon which personal property taxes are by this section made a lien, where the owner of such real property and personal property has failed to pay taxes due upon such real property and personal property for 1 or more years, may file with the department of revenue or its agent in the county in which such property is located a written request to have the personal property and real property of the owner separately assessed. Such request must be made by registered or certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department or its agent of such request, it is the duty of the department or its agent to make a separate assessment of real and personal property of the owner thereof, and such personal taxes shall not be a lien upon the real property so mortgaged of the owner thereof, and the personal property taxes shall be collected in the manner provided by law for other personal property.

(6) The holder of a mortgage or lien upon real property who files a certificate of satisfaction and the proof and acknowledgment thereof, as provided for in 71-1-211, shall file a copy of the certificate and the proof and acknowledgment with:

(a) the county treasurer if the holder has filed a notice under subsection (3); and

(b) the department of revenue or its agent in the county in which the real property is located if the holder has filed a written request under subsection (5).

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

History: En. Sec. 3828, Pol. C. 1895; re-en. Sec. 2601, Rev. C. 1907; re-en. Sec. 2153, R.C.M. 1921; Cal. Pol. C. Sec. 3717; amd. Sec. 1, Ch. 18, L. 1925; amd. Sec. 1, Ch. 113, L. 1927; amd. Sec. 1, Ch. 182, L. 1933; amd. Sec. 1, Ch. 119, L. 1935; re-en. Sec. 2153, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1937; amd. Sec. 75, Ch. 405, L. 1973; amd. Sec. 12, Ch. 388, L. 1975; R.C.M. 1947, 84-3808; amd. Sec. 42, Ch. 587, L. 1987; amd. Sec. 1, Ch. 286, L. 1989; amd. Sec. 7, Ch. 631, L. 1989; amd. Sec. 1, Ch. 611, L. 1991.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-16-403. Lien on real property and improvements. Every tax due upon real property is a lien against the property assessed, and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and improvements, which several liens attach as of January 1 in each year.

History: En. Sec. 1714, 5th Div. Comp. Stat. 1887; amd. Sec. 83, p. 105, L. 1891; amd. Sec. 3829, Pol. C. 1895; re-en. Sec. 2602, Rev. C. 1907; re-en. Sec. 2154, R.C.M. 1921; Cal. Pol. C. Sec. 3718; re-en. Sec. 2154, R.C.M. 1935; amd. Sec. 13, Ch. 388, L. 1975; R.C.M. 1947, 84-3809.

15-16-404. County lien on moneys of taxpayer. The county has a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer for any amounts due the county for any delinquent personal property taxes that are not a lien on real estate of the taxpayer and that are not delinquent personal property taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17. Due notice shall be given the lienholder, if known.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; R.C.M. 1947, 84-4202(4); amd. Sec. 43, Ch. 587, L. 1987; amd. Sec. 8, Ch. 631, L. 1989.

Cross-References

Applies to migratory personal property, 15-24-302.

Part 5

Collection by Suit

Part Cross-References

Collection of taxes on interests in United States lands, 15-24-1104.

15-16-501. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 4020, Pol. C. 1895; re-en. Sec. 2738, Rev. C. 1907; re-en. Sec. 2253, R.C.M. 1921; re-en. Sec. 2253, R.C.M. 1935; R.C.M. 1947, 84-4301.

15-16-502. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 4021, Pol. C. 1895; re-en. Sec. 2739, Rev. C. 1907; re-en. Sec. 2254, R.C.M. 1921; re-en. Sec. 2254, R.C.M. 1935; R.C.M. 1947, 84-4302.

15-16-503. Collection by suit of personal property taxes when taxpayer moves to another county. If any person removes from one county to another after being assessed on personal property, the treasurer of the county in which he was assessed may sue for and collect the same in the name of the county where the assessment was made.

History: En. Sec. 149, p. 118, L. 1891; re-en. Sec. 3917, Pol. C. 1895; re-en. Sec. 2673, Rev. C. 1907; re-en. Sec. 2226, R.C.M. 1921; Cal. Pol. C. Sec. 3808; re-en. Sec. 2226, R.C.M. 1935; R.C.M. 1947, 84-4181.

15-16-504. Evidence at trial. On the trial a certified copy of the assessment signed by the county clerk and recorder of the county where the assessment was made, with the affidavit of the treasurer thereto attached that the tax has not been paid, describing it as on the assessment book or delinquent list, is prima facie evidence that the taxes, plus interest, penalties, and costs, are due and entitles him to judgment unless the defendant proves that the tax was paid.

History: En. Sec. 150, p. 118, L. 1891; re-en. Sec. 3918, Pol. C. 1895; re-en. Sec. 2674, Rev. C. 1907; re-en. Sec. 2227, R.C.M. 1921; Cal. Pol. C. Sec. 3809; re-en. Sec. 2227, R.C.M. 1935; R.C.M. 1947, 84-4182; amd. Sec. 44, Ch. 587, L. 1987.

15-16-505. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 3919, Pol. C. 1895; re-en. Sec. 2675, Rev. C. 1907; re-en. Sec. 2228, R.C.M. 1921; re-en. Sec. 2228, R.C.M. 1935; R.C.M. 1947, 84-4183.

Part 6

Refunds

15-16-601. Repealed. Sec. 9, Ch. 539, L. 1993.

History: En. Sec. 145, p. 117, L. 1891; re-en. Sec. 3913, Pol. C. 1895; re-en. Sec. 2669, Rev. C. 1907; re-en. Sec. 2222, R.C.M. 1921; Cal. Pol. C. Sec. 3804; re-en. Sec. 2222, R.C.M. 1935; amd. Sec. 1, Ch. 201, L. 1939; amd. Sec. 1, Ch. 71, L. 1951; R.C.M. 1947, 84-4176; amd. Sec. 3, Ch. 541, L. 1979; amd. Sec. 3, Ch. 501, L. 1981; amd. Sec. 45, Ch. 587, L. 1987; amd. Sec. 2, Ch. 601, L. 1987; amd. Sec. 1, Ch. 560, L. 1991; amd. Sec. 35, Ch. 451, L. 1993.

15-16-602. Concurrent remedies. Sections 15-16-603 through 15-16-605 may not be considered or construed to be in conflict with the provisions of chapter 1, part 4. Sections 15-16-603 through 15-16-605 and the provisions of part 4 provide and afford concurrent remedies.

History: En. Sec. 2, Ch. 201, L. 1939; R.C.M. 1947, 84-4177; amd. Sec. 4, Ch. 539, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 539 in two places substituted "Sections 15-16-603 through 15-16-605" for reference to 15-16-601; and made minor changes in style.

15-16-603. Refund of taxes — limitations on refunds. (1) Subject to the provisions in subsections (2) and (3), a board of county commissioners shall order a refund:

(a) on a tax, penalty, interest, or cost paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(b) on a tax paid for which a refund is allowed under 15-16-612 or 15-16-613;

(c) on a tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for duplicate taxes paid as determined by the department of revenue;

(d) on net or gross proceeds tax, centrally assessed property tax, or local government severance tax, penalty, or interest when the department of revenue notifies the board of county commissioners of an assessment revision completed pursuant to 15-8-601; or

(e) upon entry of a decision either by the district court or by the state tax appeal board under 15-2-306 that has not been appealed to a higher court.

(2) The taxpayer shall prove that a refund is due under subsection (1)(a) or (1)(b).

(3) A refund may not be granted under subsection (1)(a) or (1)(b) unless the taxpayer or a representative of the taxpayer files a written claim with the board of county commissioners within 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

History: En. Sec. 1, Ch. 539, L. 1993.

15-16-604. Judicial review of tax refund denials. (1) A taxpayer aggrieved by a final decision of the board of county commissioners under 15-16-603 is entitled to a judicial review of the decision under this section.

(2) Proceedings for review of a decision of the board of county commissioners must be instituted by filing a petition for judicial review in the district court of the county within 30 days of receipt of the board's decision. A copy of the petition must be served on the board of county commissioners within 10 days of the filing of the petition.

(3) Review of a decision of the board of county commissioners must be conducted by the district court under the standards of review set out in 2-4-704. Additional evidence may be received by the district court under the standards set out in 2-4-703.

History: En. Sec. 2, Ch. 539, L. 1993.

15-16-605. Payment of refunds. (1) In the order to refund a tax, penalty, interest, or cost under 15-16-603, the board of county commissioners shall determine the method of payment. The board may refund the amount due the taxpayer in installments over a period not to exceed 10 years. If the refund is made in installments, the taxpayer is entitled to interest on the unpaid balance at the interest rate received on public money invested by the county as provided in Title 7, chapter 6, part 2; Title 7, chapter 6, part 27; or 17-6-204.

(2) A refund of a tax, penalty, interest, or cost under 15-16-603 must be paid by the county treasurer out of the general fund of the county. The county treasurer shall transfer money from other funds of the county and of the state, school district, or other taxing jurisdictions that are proratably responsible for the refunds as may be necessary to reimburse the county general fund for the refund.

History: En. Sec. 3, Ch. 539, L. 1993.

15-16-606 through 15-16-610 reserved.

15-16-611. Reduction of property tax for property destroyed by natural disaster — proration of taxes on replaced property. (1) The department of revenue shall, upon showing by a taxpayer that some or all of the improvements on his real property or a trailer or mobile home or that personal property taxed under Title 15, chapter 6, part 1, has been destroyed to such an extent that the improvements or personal property has been rendered unsuitable for its previous use by natural disaster, adjust the taxable value on the property, accounting for the destruction.

(2) The county treasurer shall adjust the tax due and payable for the current year on the property under 15-16-102 or on personal property under 15-16-113 or 15-24-202 as provided in subsection (3) of this section.

(3) To determine the amount of tax due for destroyed property, the county treasurer shall:

(a) multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property existed before destruction bears to 365; and

(b) multiply the amount of tax levied and assessed on the adjusted taxable value of the property for the remainder of the year by the ratio that the number of days remaining in the year after the destruction of the property bears to 365.

(4) This section does not apply to delinquent taxes owed on the destroyed property for a year prior to the year in which the property was destroyed.

(5) A taxpayer receiving a reduction in taxes on personal property under this section shall notify the department if he replaces the destroyed personal property in the same tax year that the personal property was destroyed. The tax on the personal property replacing the destroyed personal property must be prorated according to the ratio that the number of days remaining in the year after the property was replaced bears to 365. A taxpayer who fails to notify the department within 30 days from the date of the replacement of the personal property is subject to the penalty prescribed in 15-1-303.

(6) For the purposes of this section, "natural disaster" includes but is not limited to fire, flood, earthquake, or wind. A fire is considered a natural disaster regardless of the origin of the fire. However, if the taxpayer is convicted of arson for burning the property, property taxes may not be adjusted. If they had already been adjusted prior to the conviction, the original amount must be collected.

History: En. Sec. 1, Ch. 541, L. 1979; amd. Sec. 1, Ch. 263, L. 1981; amd. Sec. 1, Ch. 317, L. 1985; amd. Sec. 1, Ch. 717, L. 1991; amd. Sec. 13, Ch. 773, L. 1991.

15-16-612. Refund of tax paid. (1) If the property is destroyed after the property taxes have been paid for the current year, the taxpayer is entitled to a refund of the amount of tax paid in excess of the adjusted amount required by 15-16-611.

(2) A refund must be made as provided for in 15-16-603 through 15-16-605.

History: En. Sec. 2, Ch. 541, L. 1979; amd. Sec. 5, Ch. 539, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 539 in (2), at end, substituted "15-16-603 through 15-16-605" for "15-16-601"; and made minor changes in style.

15-16-613. Refund of certain taxes paid on migratory property. (1) Subject to the provisions of 15-16-603 through 15-16-605 and upon proof that a tax was paid in another state on the same property, a taxpayer whose property is assessed under 15-24-303 for a period longer than the actual number of months that the property is located in the state is entitled to a refund, as provided in this section.

(2) To obtain a refund, a taxpayer shall file an application for refund with the county treasurer in the county where the property was originally taxed. If a taxpayer receives an order by the board of county commissioners pursuant to 15-16-603, the taxpayer shall apply for a refund allowed under this section by January 31 following the year of assessment. The county shall make the refund within the first quarter of the following fiscal year. The application must be made on a form provided by the department of revenue and may require information as prescribed by rule of the department.

(3) The amount of the refund is the difference between the amount of tax paid under 15-24-303 and the tax owed based upon the number of months the property was located in the state for the year. The refund may not exceed the amount of the tax paid.

(4) For the purposes of this section, "month" means any part of a calendar month.

History: En. Sec. 1, Ch. 601, L. 1987; amd. Sec. 1, Ch. 778, L. 1991; amd. Sec. 6, Ch. 539, L. 1993; amd. Sec. 1, Ch. 587, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 539 in (1), near beginning, substituted "15-16-603 through 15-16-605" for "15-16-601"; in (2), at beginning of second sentence, inserted "If a taxpayer receives an order by the board of county commissioners pursuant to 15-16-603, the"; and made minor changes in style.

Chapter 587 near end of (1), after "property", substituted "is located" for "has taxable situs"; and near end of first sentence of (3), after "property", substituted "was located" for "had taxable situs". Amendment effective April 28, 1993.

Effective Date — Retroactive Applicability: Section 3, Ch. 587, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved April 28, 1993.

Part 7
Cancellations

Part Cross-References

Cancellation of taxes upon reversion to state, 77-2-314.

15-16-701. Personal property taxes five years delinquent — list. (1) It is the duty of each county treasurer to prepare in triplicate and submit to the board of county commissioners of the county, on or before the first Monday of June in each year, a list of personal property taxes that are not a lien on real estate and that have been delinquent for 5 years or more. The list must show the following:

(a) the name and address of the delinquent taxpayer;

(b) the amount of the delinquent taxes, plus interest, penalties, and costs, if any; and

(c) the date the taxes became delinquent.

(2) The list prepared pursuant to subsection (1) may not include personal property taxes that remain uncollected because of bankruptcy or other litigation.

(3) Every county treasurer shall, within the same time, prepare in triplicate and submit to the board of county commissioners of the county a list of

all contractual obligations owed to or held by the county for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations provided in 27-2-202(1). The list must show the following:

(a) the name and address of the person or persons who entered into the contractual obligation;

(b) the name of the contractual obligation, as "seed loan", "feed loan", "promissory note", as applicable; and

(c) the date of obligation, date when the last payment became due, date of the last payment on the obligation, and the date when the collection of the obligation became barred by the statute of limitations provided in 27-2-202(1).

History: En. Sec. 1, Ch. 44, L. 1949; R.C.M. 1947, 84-4215; amd. Sec. 46, Ch. 587, L. 1987; amd. Sec. 1, Ch. 521, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 521 in (1), near end, reduced from 10 years to 5 years the years of delinquency of taxes included in list; inserted (2) relating to uncollected personal property taxes; and made minor changes in style.

15-16-702. Cancellation of taxes and obligations — filing of lists. Upon receipt of such list or lists and within 30 days thereafter, the board of county commissioners shall examine the same and make any necessary corrections. Thereupon, the board of county commissioners shall make its order canceling all such personal property taxes and contractual obligations contained in the list or lists, as corrected, required by this part to be canceled and spread such order upon its minutes. The order and minutes need not set forth in full the contents of the list or lists, a proper reference therein for their identification being sufficient. When the order is made, the original or copy of the list or lists, as corrected, must be filed with and as a part of the records of the board. One legible copy thereof must be filed with the county clerk and recorder as a public record, and one legible copy thereof must be filed with the county treasurer as a permanent record of his office.

History: En. Sec. 2, Ch. 44, L. 1949; amd. Sec. 11, Ch. 126, L. 1977; R.C.M. 1947, 84-4216; amd. Sec. 47, Ch. 587, L. 1987.

15-16-703. Adjustment of accounts after cancellation. Upon notification of the order for cancellation, the county clerk and recorder and county treasurer shall adjust their taxes-receivable accounts to conform to the order of cancellation.

History: En. Sec. 3, Ch. 44, L. 1949; R.C.M. 1947, 84-4217; amd. Sec. 48, Ch. 587, L. 1987.

15-16-704. Certain unpaid taxes uncollectible — stricken from records. All unpaid taxes constituting a lien on real property in the state, levied and assessed against real property which have remained delinquent more than 10 years prior to July 1, 1976, whether the levy be by general or special assessment or by the state or any county, city, or political subdivision of the state, are hereby declared to be uncollectible and stricken from the respective tax records.

History: En. 84-4175.1 by Sec. 1, Ch. 286, L. 1975; R.C.M. 1947, 84-4175.1; amd. Sec. 49, Ch. 587, L. 1987.

Part 8
Suspensions

15-16-801. Payment of suspended delinquent property taxes. If collection of delinquent property taxes has been suspended in accordance with Title 15, chapter 24, part 17, but the purchaser of the commercial property fails to comply with any of the provisions of the resolution granting suspension under Title 15, chapter 24, part 17, the governing body that adopted the resolution may revoke the suspension. Upon revocation, the tax lien for the delinquent taxes, penalties, and interest is reinstated. Penalties and interest are to be calculated from the date of delinquency as if there had been no suspension of collection of the delinquent taxes.

History: En. Sec. 12, Ch. 631, L. 1989.

15-16-802. Suspension of certain state taxes. (1) Delinquent taxes, penalties, and interest for taxable years prior to 1988 are suspended for 36 months from May 22, 1989, for an airline incorporated in Montana that has filed for chapter 11 bankruptcy before May 22, 1989.

(2) The tax suspension provided by this section applies to property taxes levied under Title 15, chapter 10, 20-9-331, and 20-9-333.

(3) The repayment of all delinquent taxes, penalties, and interest suspended under subsection (1) must be included in the chapter 11 bankruptcy reorganization plan of the airline.

History: En. Sec. 1, Ch. 699, L. 1989.

15-16-803. Suspension of certain local government taxes. (1) The governing body of a county, consolidated government, or incorporated city or town may suspend for 36 months from May 22, 1989, delinquent taxes, penalties, and interest for an airline described in 15-16-802 located within its jurisdiction for any of the taxable years provided in 15-16-802.

(2) Before a tax suspension may be granted, the governing body of a county, consolidated government, or incorporated city or town shall approve the tax suspension by resolution, after notice and hearing.

(3) The tax suspension described in subsection (1) applies only to the number of mills levied for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion.

History: En. Sec. 2, Ch. 699, L. 1989.

CHAPTER 17

TAX SALES

Part 1 — Notice of and Protest of Sale

15-17-101. Repealed.
15-17-102. Repealed.
15-17-103 through 15-17-110 reserved.
15-17-111. Repealed.
15-17-112. Repealed.

15-17-113. Repealed.
15-17-114 through 15-17-120 reserved.
15-17-121. Definitions.
15-17-122. Notice of pending tax sale.
15-17-123. Copy of notice to be filed with county clerk — affidavit.
15-17-124. Irregular assessment.

Part 2 — Sale

15-17-201 through 15-17-208. Repealed.
15-17-209 and 15-17-210 reserved.
15-17-211. Conduct of tax sale.
15-17-212. Tax sale certificate.
15-17-213. Treasurer to record tax sales.
15-17-214. County as purchaser — assignment.

Part 3 — Procedure After Sale

15-17-301 through 15-17-305. Repealed.
15-17-306 through 15-17-310 reserved.
15-17-311. Repealed.
15-17-312. Repealed.
15-17-313 through 15-17-315 reserved.
15-17-316. Definitions.
15-17-317. Municipality as purchaser.
15-17-318. Assignment of municipality's interest.
15-17-319. Sale or lease and disposition of proceeds from lands acquired by municipality.
15-17-320. Taxes and subsequent installments of special assessments on land acquired by a municipality.
15-17-321. Resale for nonpayment.
15-17-322. Disposition of money from tax sale.
15-17-323. Assignment of rights — form.
15-17-324. Assessment of property sold at tax sale.
15-17-325. Sale not voided by misnomer of ownership.
15-17-326. Voided sale — refund — limitation on action for royalty interest.

Parts 4 through 8 reserved

Part 9 — Sale of Personal Property

15-17-901. Repealed.
15-17-902. Repealed.
15-17-903. Repealed.
15-17-904 through 15-17-910 reserved.
15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property.

Chapter Cross-References

Sale to include municipal taxes, 7-6-4414, 7-6-4423.

Suspension of property taxes for persons in military services — collection procedures abated, 10-1-606.

Statute of Limitations on recovery of property seized by tax collector, 27-2-210.

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

Tax sale for collection of unpaid irrigation district assessment, 85-7-2151.

Tax sale for collection of unpaid drainage district assessment, 85-8-603.

Part 1

Notice of and Protest of Sale

15-17-101. Repealed. Sec. 59, Ch. 587, L. 1987.

History: (1)En. Sec. 107, p. 110, L. 1891; amd. Sec. 3873, Pol. C. 1895; amd. Sec. 1, p. 142, L. 1901; re-en. Sec. 2629, Rev. C. 1907; re-en. Sec. 2182, R.C.M. 1921; Cal. Pol. C. Sec. 3764; amd. Sec. 8, Ch. 96, L. 1923; re-en. Sec. 2182, R.C.M. 1935; amd. Sec. 1, Ch. 26, L. 1939; Sec. 84-4117, R.C.M. 1947; (2)En. Sec. 109, p. 110, L. 1891; re-en. Sec. 3875, Pol. C. 1895; re-en. Sec. 2631, Rev. C. 1907; re-en. Sec. 2184, R.C.M. 1921; Cal. Pol. C. Sec. 3766; re-en. Sec. 2184, R.C.M. 1935; Sec. 84-4118, R.C.M. 1947; (3)En. Sec. 110, p. 110, L. 1891; re-en. Sec. 3876, Pol. C. 1895; re-en. Sec. 2632, Rev. C. 1907; re-en. Sec. 2185, R.C.M. 1921; Cal. Pol. C. Sec. 3768; re-en. Sec. 2185, R.C.M. 1935; Sec. 84-4119, R.C.M. 1947; (4)En. Sec. 111, p. 110, L. 1891; re-en. Sec. 3877, Pol. C. 1895; re-en. Sec. 2633, Rev. C. 1907; re-en. Sec. 2186, R.C.M. 1921; Cal. Pol. C. Sec. 3768; re-en. Sec. 2186, R.C.M. 1935; Sec. 84-4120, R.C.M. 1947; R.C.M. 1947, 84-4117, 84-4118, 84-4119, 84-4120; amd. Sec. 1, Ch. 122, L. 1985.

15-17-102. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 112, p. 110, L. 1891; re-en. Sec. 3878, Pol. C. 1895; re-en. Sec. 2634, Rev. C. 1907; re-en. Sec. 2187, R.C.M. 1921; Cal. Pol. C. Sec. 3769; re-en. Sec. 2187, R.C.M. 1935; R.C.M. 1947, 84-4121.

15-17-103 through 15-17-110 reserved.

15-17-111. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 147, p. 118, L. 1891; re-en. Sec. 3915, Pol. C. 1895; re-en. Sec. 2671, Rev. C. 1907; re-en. Sec. 2224, R.C.M. 1921; Cal. Pol. C. Sec. 3806; re-en. Sec. 2224, R.C.M. 1935; R.C.M. 1947, 84-4179.

15-17-112. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 151, p. 118, L. 1891; re-en. Sec. 3920, Pol. C. 1895; re-en. Sec. 2676, Rev. C. 1907; re-en. Sec. 2229, R.C.M. 1921; re-en. Sec. 2229, R.C.M. 1935; R.C.M. 1947, 84-4184.

15-17-113. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 152, p. 119, L. 1891; re-en. Sec. 3921, Pol. C. 1895; re-en. Sec. 2677, Rev. C. 1907; re-en. Sec. 2230, R.C.M. 1921; re-en. Sec. 2230, R.C.M. 1935; R.C.M. 1947, 84-4185; amd. Sec. 4, Ch. 17, L. 1985.

15-17-114 through 15-17-120 reserved.

15-17-121. Definitions. Except as otherwise specifically provided, when terms mentioned in Title 15, chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

(1) "Certificate" or "tax sale certificate" means the document described in 15-17-212.

(2) (a) "Cost" means the cost incurred by the county as a result of a taxpayer's failure to pay taxes when due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the administrative cost of:

(i) preparing the list of delinquent taxes;

(ii) preparing the notice of pending tax sale;

(iii) conducting the tax sale;

(iv) assigning the county's interest in a tax lien to a third party;

(v) identifying interested persons entitled to notice of the pending issuance of a tax deed;

(vi) notifying interested persons;

(vii) issuing the tax deed; and

(viii) any other administrative task associated with accounting for or collecting delinquent taxes.

(b) Cost does not include the costs incurred by the owner of a property tax lien other than the county.

(3) "County" means any county government and includes those classified as consolidated governments.

(4) "Property tax lien" means a lien acquired by the payment at a tax sale of all outstanding delinquent taxes, including penalties, interest, and costs.

(5) "Purchaser" means any person, other than the person to whom the property is assessed, who pays at the tax sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.

(6) "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.

(7) "Tax sale" means:

(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien.

History: En. Sec. 1, Ch. 587, L. 1987; amd. Sec. 2, Ch. 704, L. 1989.

15-17-122. Notice of pending tax sale. (1) The county treasurer shall publish or post a notice of pending tax sale. The notice must include:

(a) the specific time, date, and place an interest in the property on which the taxes are delinquent will be offered for sale;

(b) a statement that the delinquent taxes, including penalties, interest, and costs, are a lien upon the property and that unless the delinquent taxes, penalties, interest, and costs are paid prior to the time of the tax sale, the lien will be offered for sale at the time and place specified in subsection (1)(a).

(2) The notice required in subsection (1) must also include a statement that a list of each property on which the taxes are delinquent is on file in the office of the county treasurer and open to inspection. The list must include:

(a) the name and address of the person to whom the delinquent taxes are assessed;

(b) the amounts of the delinquent taxes, all accrued penalties, interest, and other costs; and

(c) a statement that penalties, interest, and costs will be added to delinquent taxes.

(3) The notice must be published once a week for 3 consecutive weeks in the newspaper designated for county printing as provided in 7-5-2411. If no newspaper is published in the county, the notice must be posted by the county treasurer in three public places. The notice must be first published or posted on or before the last Monday in June.

(4) Except as provided in 15-17-211(2), the sale may not be held less than 21 days or more than 28 days from the date of first publication or first day the notice is posted.

(5) The sale must be held at the county courthouse.

(6) Property on which taxes are delinquent but for which proper notification was not made may not be included in the current year's notice and sale.

In the event of improper notification, the sale may be held on all property properly noticed.

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

History: En. Sec. 2, Ch. 587, L. 1987; amd. Sec. 9, Ch. 631, L. 1989.

Cross-References

Delinquent city or town taxes to be included, 7-6-4414, 7-6-4423.

15-17-123. Copy of notice to be filed with county clerk — affidavit. (1) Immediately following publication or posting of the notice required in 15-17-122, the county treasurer shall file a copy of the notice with the county clerk. The copy must be accompanied by an affidavit signed by the county treasurer stating:

(a) the name of the newspaper and its address of publication; and

(b) the dates the notice was published.

(2) If no newspaper is published in the county, the affidavit must list the locations and date of the posting required by 15-17-122.

(3) The affidavit filed under subsection (1) or (2) is prima facie evidence of all the facts stated therein.

History: En. Sec. 3, Ch. 587, L. 1987.

15-17-124. Irregular assessment. If the county treasurer discovers, prior to the tax sale, that property on which the taxes are delinquent has been irregularly assessed, he may not offer the property or a property tax lien for sale. In such event, the taxes on the property must be listed on the assessment book as uncollected for the year in which they were due, and they must be assessed and collected during the succeeding year as taxes are regularly assessed and collected.

History: En. Sec. 4, Ch. 587, L. 1987.

Part 2

Sale

Part Cross-References

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

Interest of purchaser at tax sale when land sold was being purchased from the state, 77-2-315.

15-17-201 through 15-17-208. Repealed. Sec. 59, Ch. 587, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

15-17-201. (1)En. Sec. 1732, 5th Div. Comp. Stat. 1887; amd. Sec. 36, p. 96, Ex. L. 1887; amd. Sec. 113, p. 111, L. 1891; amd. Sec. 3880, Pol. C. 1895; re-en. Sec. 2636, Rev. C. 1907; re-en. Sec. 2189, R.C.M. 1921; re-en. Sec. 2189, R.C.M. 1935; Sec. 84-4122, R.C.M. 1947; (2)En. Sec. 114, p. 111, L. 1891; re-en. Sec. 3881, Pol. C. 1895; re-en. Sec. 2637, Rev. C. 1907; re-en. Sec. 2190, R.C.M. 1921; re-en. Sec. 2190, R.C.M. 1935; Sec. 84-4123, R.C.M. 1947; R.C.M. 1947, 84-4122, 84-4123.

15-17-202. En. Sec. 115, p. 111, L. 1891; re-en. Sec. 3882, Pol. C. 1895; re-en. Sec. 2638, Rev. C. 1907; re-en. Sec. 2191, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1923; amd. Sec. 1, Ch. 31, L. 1929; re-en. Sec. 2191, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1947; R.C.M. 1947, 84-4124(part).

15-17-203. En. Sec. 117, p. 111, L. 1891; re-en. Sec. 3884, Pol. C. 1895; re-en. Sec. 2640, Rev. C. 1907; re-en. Sec. 2193, R.C.M. 1921; re-en. Sec. 2193, R.C.M. 1935; R.C.M. 1947, 84-4126.

15-17-204. (1)En. Sec. 118, p. 111, L. 1891; re-en. Sec. 3885, Pol. C. 1895; re-en. Sec. 2641, Rev. C. 1907; re-en. Sec. 2194, R.C.M. 1921; Cal. Pol. C. Sec. 3776; re-en. Sec. 2194, R.C.M. 1935; Sec. 84-4127, R.C.M. 1947; (2)En. Sec. 119, p. 112, L. 1891; re-en. Sec. 3886, Pol. C. 1895; re-en. Sec. 2642, Rev. C. 1907; re-en. Sec. 2195, R.C.M. 1921; re-en. Sec. 2195, R.C.M. 1935; Sec. 84-4128, R.C.M. 1947; (3)En. Sec. 125, p. 113, L. 1891; re-en. Sec. 3892, Pol. C. 1895; re-en. Sec. 2648, Rev. C. 1907; re-en. Sec. 2204, R.C.M. 1921; re-en. Sec. 2204, R.C.M. 1935; Sec. 84-4135, R.C.M. 1947; R.C.M. 1947, 84-4127, 84-4128, 84-4135.

15-17-205. En. Sec. 120, p. 112, L. 1891; re-en. Sec. 3887, Pol. C. 1895; re-en. Sec. 2643, Rev. C. 1907; re-en. Sec. 2196, R.C.M. 1921; re-en. Sec. 2196, R.C.M. 1935; amd. Sec. 1, Ch. 191, L. 1939; R.C.M. 1947, 84-4129.

15-17-206. En. Sec. 121, p. 112, L. 1891; re-en. Sec. 3888, Pol. C. 1895; re-en. Sec. 2644, Rev. C. 1907; re-en. Sec. 2197, R.C.M. 1921; re-en. Sec. 2197. R.C.M. 1935; amd. Sec. 1, Ch. 8, L. 1967; R.C.M. 1947, 84-4130.

15-17-207. En. Sec. 115, p. 111, L. 1891; re-en. Sec. 3882, Pol. C. 1895; re-en. Sec. 2638, Rev. C. 1907; re-en. Sec. 2191, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1923; amd. Sec. 1, Ch. 31, L. 1929; re-en. Sec. 2191, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1947; R.C.M. 1947, 84-4124(part); amd. Sec. 5, Ch. 17, L. 1985.

15-17-208. En. Sec. 115, p. 111, L. 1891; re-en. Sec. 3882, Pol. C. 1895; re-en. Sec. 2638, Rev. C. 1907; re-en. Sec. 2191, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1923; amd. Sec. 1, Ch. 31, L. 1929; re-en. Sec. 2191, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1947; R.C.M. 1947, 84-4124(part).

15-17-209 and 15-17-210 reserved.

15-17-211. Conduct of tax sale. (1) On the date and at the time and place specified in the notice, the county treasurer shall, except as provided in 15-17-124, begin the tax sale of all property described in the list required in 15-17-122(2). The tax sale must continue until the county treasurer declares it over, but must continue for a period of not less than 1 day. The treasurer is not required to read the list but shall make a copy of the list available for public inspection during regular business hours.

(2) The treasurer may postpone the day of commencing the sale on a day-to-day basis without publishing a new notice, provided that the sale is held within 3 weeks from the day first fixed.

(3) Property assessed under 15-17-324 that has not been sold to a purchaser other than the county may, at the discretion of the county treasurer, be offered for sale at tax sales subsequent to the sale at which it was first offered.

History: En. Sec. 5, Ch. 587, L. 1987.

Cross-References

Purchase of land by irrigation district, 85-7-2157.

15-17-212. Tax sale certificate. (1) Upon receipt of all delinquent taxes, penalties, interest, and costs, the county treasurer shall prepare a tax sale certificate that must contain:

(a) the date on which the property taxes became delinquent;

(b) the date on which a property tax lien was sold at a tax sale;

(c) the name and address of record of the person to whom the taxes were assessed;

(d) a description of the property on which the taxes were assessed;

(e) the name and mailing address of the purchaser;

(f) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs;

(g) a statement that the certificate represents a lien on the property that may lead to the issuance of a tax deed for the property;

(h) a statement specifying the date on which the purchaser will be entitled to a tax deed; and

(i) an identification number corresponding to the tax sale certificate number recorded by the county treasurer as required in 15-17-213.

(2) The certificate must be signed by the county treasurer and delivered to the purchaser. A copy of the certificate must be filed by the treasurer in the office of the county clerk.

History: En. Sec. 6, Ch. 587, L. 1987.

15-17-213. Treasurer to record tax sales. Prior to delivering the tax sale certificate to the purchaser, the county treasurer shall make a record of the tax sale. The record must include:

(1) the name and address of the purchaser;

(2) the date on which the tax lien was purchased;

(3) a description of the property on which the certificate is a lien, which description must correspond to the description listed on the certificate;

(4) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs; and

(5) a number identifying the tax sale certificate issued upon payment of the delinquency.

History: En. Sec. 7, Ch. 587, L. 1987.

15-17-214. County as purchaser — assignment. (1) If no person pays the delinquent taxes, including penalties, interest, and costs, on the first day of the tax sale, the county is considered to be the purchaser.

(2) (a) After the 21st day following the first day of the tax sale, the county treasurer shall identify and list all property that was sold at the tax sale. He shall also record that the county is the purchaser of all property remaining unsold and upon which the taxes remain delinquent.

(b) The record of the property in which the county is listed as the purchaser may be made by the treasurer by a separate tax sale certificate of each property or by reference to the property as recorded in the list required under 15-16-301.

(3) A property tax lien of the county in any property acquired by the county under subsection (1) must be assigned by the county treasurer as provided in 15-17-323 upon the payment of all delinquent taxes, including penalties, interest, and costs specified in 15-17-323.

History: En. Sec. 8, Ch. 587, L. 1987.

Cross-References

Assignment of rights by county, 15-17-323.

Assessment of county tax deed lands, 15-17-324.

Redemption proceeds distribution, 15-18-114.

County authorized to acquire property by taxation, 70-1-204.

Payment of delinquent irrigation district assessments, 85-7-2136.

Issuance of debenture certificate to irrigation district when land struck off to county, 85-7-2152.

Payment of delinquent drainage district assessments, 85-8-601.

Part 3
Procedure After Sale

15-17-301 through 15-17-305. Repealed. Sec. 59, Ch. 587, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

15-17-301. En. Sec. 116, p. 111, L. 1891; re-en. Sec. 3883, Pol. C. 1895; re-en. Sec. 2639, Rev. C. 1907; re-en. Sec. 2192, R.C.M. 1921; re-en. Sec. 2192, R.C.M. 1935; R.C.M. 1947, 84-4125.

15-17-302. En. Sec. 2, Ch. 65, L. 1933; re-en. Sec. 2008.2, R.C.M. 1935; R.C.M. 1947, 84-4140.

15-17-303. (1), (2)En. Sec. 1, Ch. 151, L. 1917; re-en. Sec. 2207, R.C.M. 1921; re-en. Sec. 2207, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1937; amd. Sec. 1, Ch. 24, L. 1939; amd. Sec. 1, Ch. 11, L. 1947; Sec. 84-4138, R.C.M. 1947; (3)En. Sec. 2, Ch. 151, L. 1917; re-en. Sec. 2208, R.C.M. 1921; re-en. Sec. 2208, R.C.M. 1935; Sec. 84-4139, R.C.M. 1947; (4)En. Sec. 3, Ch. 65, L. 1933; re-en. Sec. 2208.3, R.C.M. 1935; Sec. 84-4141, R.C.M. 1947; R.C.M. 1947, 84-4138, 84-4139, 84-4141; amd. Sec. 10, Ch. 581, L. 1979; amd. Sec. 3, Ch. 576, L. 1981; amd. Sec. 3, Ch. 6, Sp. L. 1981.

15-17-304. En. Sec. 153, p. 119, L. 1891; re-en. Sec. 3922, Pol. C. 1895; re-en. Sec. 2678, Rev. C. 1907; re-en. Sec. 2231, R.C.M. 1921; Cal. Pol. C. Sec. 3813; re-en. Sec. 2231, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1937; R.C.M. 1947, 84-4186.

15-17-305. En. Sec. 154, p. 119, L. 1891; re-en. Sec. 3923, Pol. C. 1895; re-en. Sec. 2679, Rev. C. 1907; re-en. Sec. 2232, R.C.M. 1921; Cal. Pol. C. Sec. 3814; re-en. Sec. 2232, R.C.M. 1935; R.C.M. 1947, 84-4187; amd. Sec. 9, Ch. 79, L. 1983.

15-17-306 through 15-17-310 reserved.

15-17-311. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 148, p. 118, L. 1891; re-en. Sec. 3916, Pol. C. 1895; re-en. Sec. 2672, Rev. C. 1907; re-en. Sec. 2225, R.C.M. 1921; Cal. Pol. C. Sec. 3807; re-en. Sec. 2225, R.C.M. 1935; R.C.M. 1947, 84-4180.

15-17-312. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 1, Ch. 131, L. 1927; re-en. Sec. 2197.1, R.C.M. 1935; R.C.M. 1947, 84-4131; amd. Sec. 2, Ch. 458, L. 1985.

15-17-313 through 15-17-315 reserved.

15-17-316. Definitions. Unless the context indicates otherwise, as used in 15-17-316 through 15-17-320, the following definitions apply:

(1) "Improvement fund" means, with respect to any special assessments, the fund of the municipality into which collections of the special assessments have been pledged or appropriated.

(2) "Municipality" means, with respect to special assessments levied under Title 7, chapter 12, parts 41 through 46, the city or town that levied such assessments.

History: En. Sec. 8, Ch. 617, L. 1987.

15-17-317. Municipality as purchaser. Whenever property has been struck off to the county at a tax sale under 15-17-214, is subject to the lien of delinquent special assessments, and has not been assigned under 15-17-214 or 15-17-323, at the request of the municipality the county treasurer shall assign all of the rights of the county acquired therein at the sale to the municipality upon payment of any delinquent taxes (excluding assessments) and costs, without penalty or interest. The duplicate certificate of sale must be delivered to the treasurer of the municipality and filed by him in his office. No charge may be made for the duplicate certificate when the municipality is the purchaser, and in such case the county treasurer shall make an entry "sold to the municipality" on the assessment book opposite the tax, and he must be credited with the delinquent amount thereof in the settlement. Property sold to the municipality must be held in trust by the municipality for the improvement fund into which the delinquent special assessments are payable.

History: En. Sec. 9, Ch. 617, L. 1987; amd. Sec. 8, Ch. 83, L. 1989.

15-17-318. Assignment of municipality's interest. (1) At any time after a parcel of land has been acquired by a municipality, as provided in 15-17-317, and has not been redeemed, the treasurer of the municipality shall assign all the rights of the municipality in the property to any person who pays:

(a) the purchase price paid by the municipality;

(b) the delinquent assessments;

(c) interest on the purchase price and delinquent assessments at the rate of 5/6 of 1% a month; and

(d) penalties and costs as provided by law.

(2) The treasurer of the municipality shall execute to such person a certificate of sale for the parcel, which may be in substantially the form provided in 15-17-212 for the assignment of the interests of the county. If the certificate of sale becomes lost or accidentally destroyed by the assignee, the treasurer of the municipality shall issue a duplicate certificate to the assignee after the assignee delivers to the treasurer evidence satisfactory to him, including an affidavit of the assignee, that the certificate has been lost or destroyed.

(3) An assignment by a municipality under this section discharges the trust created under 15-17-317. The municipality may also discharge the trust created under 15-17-317 by paying into the improvement fund the amount of the delinquent assessments and interest accrued thereon.

History: En. Sec. 10, Ch. 617, L. 1987; amd. Sec. 9, Ch. 83, L. 1989.

15-17-319. Sale or lease and disposition of proceeds from lands acquired by municipality. A municipality may sell, donate, or lease property it acquires under 15-17-317 in the same manner as a county may sell, donate, or lease tax-deed property under Title 7, chapter 8, part 23. All money received by the municipality from the sale or lease of the land, after payment of the cost of sale, not to exceed $25, must be paid into the improvement fund to the extent of the delinquent assessments, interest, and penalties. The surplus, if any, must be paid into any revolving fund that secures payment of special assessments or, if there are none, to the general fund of the municipality.

History: En. Sec. 11, Ch. 617, L. 1987; amd. Sec. 2, Ch. 369, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 369 in two places, in first sentence after "sell", inserted "donate"; and made minor changes in style. Amendment effective April 16, 1993.

15-17-320. Taxes and subsequent installments of special assessments on land acquired by a municipality. For property that is acquired by a municipality as provided in 15-17-317, subsequent installments of the special assessment or assessments, if any, and other special assessments not then delinquent must be levied, and taxes for the following years must be assessed in the same manner as if the property had not been so acquired. If the special assessments or installments thereof or taxes are not paid when due, the property must again be sold in the manner provided by law and the levies of special assessments, assessments of taxes, and the sale of the property for delinquent special assessments and taxes must continue until the time when the property has been redeemed from such sale.

History: En. Sec. 12, Ch. 617, L. 1987.

15-17-321. Resale for nonpayment. (1) If a purchaser other than the county does not pay the delinquent taxes, including penalties, interest, and costs, before 10 a.m. on the next business day following the day of purchase at a tax sale, the property must be made available for sale for the amount of the delinquent taxes, including penalties, interest, and costs, on the following business day of the sale, except as provided in subsection (2).

(2) If the sale was made on the last day of the tax sale and payment was not received as provided in subsection (1), the county is considered to be the purchaser as provided in 15-17-214.

History: En. Sec. 9, Ch. 587, L. 1987.

15-17-322. Disposition of money from tax sale. All money received from purchasers for delinquent taxes, penalties, interest, and costs must be deposited in the county treasury. The money received, other than costs, must be credited to the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed. Any money received for costs or any money remaining after crediting the separate funds must be deposited to the credit of the county general fund.

History: En. Sec. 10, Ch. 587, L. 1987.

Cross-References

Crediting of proceeds to irrigation district, 85-7-2152.

15-17-323. Assignment of rights — form. (1) Any tax sale certificate or other official record in which the county is listed as the purchaser must be assigned by the county treasurer to any person who pays to the county the amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency.

(2) The assignment made under subsection (1) must be in the form of an assignment certificate in substantially the following form:

I, ..., the treasurer of .... County, state of Montana, hereby certify that a tax sale for tax year 19.., in the county of ...., was held on .... (date), for the purpose of liquidating delinquent assessments, and I further certify that a property tax lien for delinquent taxes in the following property .... (insert property description) was offered for sale and that there was no purchaser of the property tax lien. Accordingly, the county was listed as the purchaser as required by 15-17-214, MCA. As of the date of this certificate, the delinquency, including penalties, interest, and costs amounting to $.........., has not been liquidated by the person to whom the property was assessed, nor has the delinquency been otherwise redeemed.

There having been no liquidation of the delinquency or other redemption, I hereby assign all rights, title, and interest of the county of ...., state of Montana, acquired in such property by virtue of the sale to .... (name and address of assignee) to proceed to obtain a tax deed to the property or receive payment in case of redemption as provided by law.

Witness my hand and official seal of office this .... day of ...., 19...

. . . . County Treasurer
. . . . County

(3) An assignment made by a purchaser other than the county, by an assignee of the county, or by a previous assignee may be made for any consideration whatsoever. An assignment so made is legal and binding only upon filing with the county treasurer a statement that the purchaser's or other assignee's interest in the property has been assigned. The statement must contain:

(a) the name and address of the new assignee;

(b) the name and address of the original purchaser of the tax sale certificate;

(c) the name and address of each previous assignee, if any;

(d) a description of the property upon which the property tax lien was issued, which description must contain the same information as contained in the tax sale certificate or assignment certificate, as appropriate;

(e) the signature of the party, be it purchaser or assignee, making the assignment;

(f) the signature of the new assignee; and

(g) the date on which the statement was signed.

(4) If the certificate described in subsection (1) or the statement described in subsection (3) is lost or destroyed, the county treasurer shall, upon adequate proof and signed affidavit by the assignee that loss or destruction has occurred, issue a duplicate certificate to the assignee.

(5) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued on or before March 5, 1917, or for which a tax deed was not issued on or before April 23, 1987, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at a tax sale may now have.

History: En. Sec. 11, Ch. 587, L. 1987.

Cross-References

Assignment of county's interest, 15-17-214.

Purchase by irrigation district, 85-7-2158.

15-17-324. Assessment of property sold at tax sale. (1) The assessment of property on which a tax sale certificate has been issued or for which the county is listed as the purchaser as provided in 15-17-214 continues in the same manner as other property is assessed.

(2) If any assessed taxes are not paid when due, they are delinquent.

History: En. Sec. 12, Ch. 587, L. 1987.

Cross-References

Redemption proceeds distribution, 15-18-114.

15-17-325. Sale not voided by misnomer of ownership. When a tax sale certificate is acquired as provided in 15-17-212 or when the county is listed as the purchaser as provided in 15-17-214 and the taxes were properly assessed on the property of a particular person, no misnomer of ownership or other mistake relating to ownership affects the sale or renders it void or voidable.

History: **En. Sec. 13, Ch. 587, L. 1987.**

15-17-326. Voided sale — refund — limitation on action for royalty interest. (1) If a tax sale held under the provisions of this chapter is declared void by a court for irregularity in the assessment, levy, or sale, the money paid by the purchaser at the sale or by any assignee must be refunded, with interest at the rate payable upon delinquencies as provided in 15-16-102 from the date of the payment, to the purchaser or owner of the tax sale certificate, together with any penalty paid by the purchaser.

(2) Following the payment of a refund as provided in subsection (1), the county is considered the purchaser and has a property tax lien upon the property for the legal taxes on the property accruing from the date of delinquency, plus penalties and interest as provided in 15-16-102. Any money refunded that was received as provided in 15-17-212 and distributed by the treasurer to the state or a city, town, or district must be charged to the state, city, town, or district, respectively, by the treasurer and deducted from the next money due the state, city, town, or district on account of taxes paid or collected. A purchaser of a property tax lien or owner thereof by assignment where sales have been made by a city or town which by resolution or ordinance collects its own taxes instead of having the same collected by the county treasurer must be reimbursed in similar manner and in similar circumstances out of the city or town treasury upon order of the mayor or, where applicable, the city manager or chairman of the city commission. The city or town clerk or city or town treasurer, as appropriate, shall make proper charges and deductions against the respective funds of the city or town upon the next collection of taxes by the city or town.

(3) The purchaser has a lien upon the property for the amount of taxes, penalties, interest, and costs paid, with the interest to be at the rate specified for delinquencies in 15-16-102. If the purchaser is in possession of the property and resides thereon, he may not be ejected from the property until his lien has been liquidated.

(4) All affirmative defenses at law or equity, including but not limited to estoppel, laches, and adverse possession, may apply in a suit brought to challenge the title to a royalty interest in land claimed to have been acquired by a county by tax deed.

(5) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within the period prescribed in 27-2-210.

History: **En. Sec. 14, Ch. 587, L. 1987.**

Parts 4 through 8 reserved

Part 9

Sale of Personal Property

Part Cross-References

Applicable to collection of liens for county licenses, 7-21-2104.

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

15-17-901. Repealed. Sec. 59, Ch. 587, L. 1987.

History: (1)En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; Sec. 84-4202, R.C.M. 1947; (2)En. Sec. 3942, Pol. C. 1895; re-en. Sec. 2685, Rev. C. 1907; re-en. Sec. 2240, R.C.M. 1921; Cal. Pol. C. Sec. 3822; re-en. Sec. 2240, R.C.M. 1935; Sec. 84-4203, R.C.M. 1947; (3)En. Sec. 135, p. 116, L. 1891; re-en. Sec. 3902, Pol. C. 1895; re-en. Sec. 2658, Rev. C. 1907; re-en. Sec. 2241, R.C.M. 1921; re-en. Sec. 2241, R.C.M. 1935; Sec. 84-4204, R.C.M. 1947; (4)En. Sec. 137, p. 116, L. 1891; re-en. Sec. 3904, Pol. C. 1895; re-en. Sec. 2660, Rev. C. 1907; re-en. Sec. 2243, R.C.M. 1921; re-en. Sec. 2243, R.C.M. 1935; Sec. 84-4205, R.C.M. 1947; (5)En. Sec. 138, p. 116, L. 1891; re-en. Sec. 3905, Pol. C. 1895; re-en. Sec. 2661, Rev. C. 1907; re-en. Sec. 2244, R.C.M. 1921; re-en. Sec. 2244, R.C.M. 1935; Sec. 84-4206, R.C.M. 1947; R.C.M. 1947, 84-4202(3), 84-4203, 84-4204, 84-4205, 84-4206.

15-17-902. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 139, p. 116, L. 1891; re-en. Sec. 3906, Pol. C. 1895; re-en. Sec. 2662, Rev. C. 1907; re-en. Sec. 2245, R.C.M. 1921; re-en. Sec. 2245, R.C.M. 1935; R.C.M. 1947, 84-4207.

15-17-903. Repealed. Sec. 59, Ch. 587, L. 1987.

History: En. Sec. 140, p. 116, L. 1891; amd. Sec. 3907, Pol. C. 1895; re-en. Sec. 2663, Rev. C. 1907; re-en. Sec. 2246, R.C.M. 1921; re-en. Sec. 2246, R.C.M. 1935; R.C.M. 1947, 84-4208.

15-17-904 through 15-17-910 reserved.

15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property. (1) The tax on personal property may be collected and payment enforced by the seizure and sale of any personal property in the possession of the person assessed. Seizure and sale are authorized at any time after the date the taxes become delinquent or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to one method does not bar the right to resort to any other method. Any of the methods provided may be used until the full amount of the tax is collected.

(2) The provisions of 15-16-113 and this section apply to a seizure and sale under subsection (1).

(3) A sale under subsection (1) must be at public auction.

(4) For seizing and selling personal property, the treasurer shall charge $25, plus the mileage allowance provided by law to the sheriff, plus reasonable expenses for seizing, handling, keeping, or caring for any property seized. The charge and other costs may be charged only when property is actually seized and offered for sale or sold.

(5) On payment of the price bid for any property sold as provided in this section, delivery of the property, with a bill of sale, vests the title of the property in the purchaser.

(6) (a) After sale of the property, the proceeds of the sale must be used first to reimburse the county for all costs and charges incurred in seizing the property and conducting the sale. Any excess, up to the total amount of the taxes owed, must be distributed proportionally to the funds that would have received the taxes if they had been paid before becoming delinquent. Any remaining excess, up to the amount of the penalty and interest owed, must then be distributed proportionally to the fund that would have received the penalty and interest if they had been paid in full.

(b) Any money collected in excess of the delinquent tax, penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. If the person does not claim the excess immediately following the sale, the treasurer shall deposit the money in the county treasury for a period of 1 year from the date of sale. If the person has not claimed the excess within 1 year from the date of sale, the county treasurer shall deposit the amount in the county general fund and the person has no claim to it.

(7) Any property seized for the purpose of liquidating a delinquency by a tax sale that remains unsold following a sale may be left at the place of sale at the risk of the owner.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

(9) The county commission, in its discretion, may cancel any personal property taxes, including penalty, interest, costs, and charges that remain unsatisfied after the property upon which the taxes were assessed had been seized and sold. If the taxes are canceled, one copy of the order of cancellation must be filed with the county clerk and one copy with the county treasurer.

History: En. Sec. 15, Ch. 587, L. 1987; amd. Sec. 10, Ch. 631, L. 1989; amd. Sec. 1, Ch. 36, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 36 in (3) deleted former second sentence that read: "The minimum bid for any property offered for sale must be of a sufficient amount to pay the delinquent taxes, including penalties, interest, and costs"; substituted (6)(a) concerning proceeds of sale for former subsection that read: "All money collected from the sale of property in liquidation of the delinquency, including delinquent taxes, penalties, and interest but not costs, must be credited by the treasurer to the appropriate funds"; inserted (9) allowing cancellation of personal property taxes remaining unsatisfied after sale of personal property; and made minor changes in style.

CHAPTER 18

OWNERSHIP INTERESTS IN LAND SOLD FOR TAXES

Part 1 — Redemption

15-18-101 through 15-18-108. Repealed.
15-18-109 and 15-18-110 reserved.
15-18-111. Time for redemption — interested party.
15-18-112. Redemption from property tax lien.
15-18-113. Treasurer to record redemptions.
15-18-114. Distribution of redemption proceeds.

Part 2 — Issuing a Tax Deed

15-18-201 through 15-18-205. Repealed.
15-18-206 through 15-18-210 reserved.
15-18-211. Tax deed — fee.
15-18-212. Notice — proof of notice — penalty for failure to notify.
15-18-213. Form of tax deed — prima facie evidence.
15-18-214. Effect of deed.
15-18-215. Form of notice that tax deed may issue.
15-18-216. Form of proof of notice.

Part 3 — Action for Tax Deed (Repealed. Sec. 59, Ch. 587, L. 1987)

Part 4 — Quiet Title

15-18-401 through 15-18-404. Repealed.
15-18-405 through 15-18-410 reserved.
15-18-411. Action to quiet title to tax deed — notice.
15-18-412. Procedure in tax deed quiet title action.
15-18-413. Title conveyed by deed — defects.

Chapter Cross-References

Interest of purchaser at tax sale when land sold was being purchased from the state, 77-2-315.

Part 1
Redemption

Part Cross-References

Redemption of property sold for delinquent irrigation district assessment, 85-7-2151.

Redemption of property sold for delinquent drainage district assessment, 85-8-603.

15-18-101 through 15-18-108. Repealed. Sec. 59, Ch. 587, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

15-18-101. En. Sec. 122, p. 113, L. 1891; amd. Sec. 3889, Pol. C. 1895; re-en. Sec. 2645, Rev. C. 1907; re-en. Sec. 2201, R.C.M. 1921; Cal. Pol. C. Sec. 3780; amd. Sec. 1, Ch. 125, L. 1933; re-en. Sec. 2201, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1941; R.C.M. 1947, 84-4132.

15-18-102. En. Sec. 1, Ch. 98, L. 1913; re-en. Sec. 2210, R.C.M. 1921; re-en. Sec. 2210, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1939; R.C.M. 1947, 84-4154; amd. Sec. 1, Ch. 313, L. 1985.

15-18-103. En. Sec. 1, Ch. 91, L. 1915; amd. Sec. 1, Ch. 73, L. 1919; re-en. Sec. 2211, R.C.M. 1921; amd. Sec. 1, Ch. 48, L. 1923; re-en. Sec. 2211, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1941; amd. Sec. 16, Ch. 52, L. 1977; R.C.M. 1947, 84-4155.

15-18-104. En. Sec. 155, p. 120, L. 1891; re-en. Sec. 3924, Pol. C. 1895; re-en. Sec. 2680, Rev. C. 1907; re-en. Sec. 2233, R.C.M. 1921; Cal. Pol. C. Sec. 3815; re-en. Sec. 2233, R.C.M. 1935; R.C.M. 1947, 84-4188.

15-18-105. En. Sec. 123, p. 113, L. 1891; re-en. Sec. 3890, Pol. C. 1895; re-en. Sec. 2646, Rev. C. 1907; re-en. Sec. 2202, R.C.M. 1921; Cal. Pol. C. Sec. 3781; re-en. Sec. 2202, R.C.M. 1935; R.C.M. 1947, 84-4133.

15-18-106. En. Sec. 124, p. 113, L. 1891; re-en. Sec. 3891, Pol. C. 1895; re-en. Sec. 2647, Rev. C. 1907; re-en. Sec. 2203, R.C.M. 1921; re-en. Sec. 2203, R.C.M. 1935; R.C.M. 1947, 84-4134.

15-18-107. En. Sec. 126, p. 113, L. 1891; re-en. Sec. 3893, Pol. C. 1895; re-en. Sec. 2649, Rev. C. 1907; re-en. Sec. 2205, R.C.M. 1921; re-en. Sec. 2205, R.C.M. 1935; R.C.M. 1947, 84-4136.

15-18-108. En. Sec. 156, p. 120, L. 1891; re-en. Sec. 3925, Pol. C. 1895; re-en. Sec. 2681, Rev. C. 1907; re-en. Sec. 2234, R.C.M. 1921; Cal. Pol. C. Sec. 3816; amd. Sec. 1, Ch. 164, L. 1929; re-en. Sec. 2234, R.C.M. 1935; R.C.M. 1947, 84-4189.

15-18-109 and 15-18-110 reserved.

15-18-111. Time for redemption — interested party. (1) Except as provided in subsection (2), redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, or any interested party within 36 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(2) For property subdivided as a residential or commercial lot upon which taxes or special assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party within 24 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(3) For the purposes of this chapter, an "interested party" includes a mortgagee, vendor of a contract for deed or his successor in interest, lienholder, or other person who has a properly recorded interest in the property. A person having an interest in property on which there is a property tax lien but which interest is not properly recorded is not an interested party for the purposes of this chapter.

History: En. Sec. 16, Ch. 587, L. 1987; amd. Sec. 14, Ch. 617, L. 1987; amd. Sec. 1, Ch. 564, L. 1989.

Cross-References

Suspension of property taxes for persons in military service, 10-1-606.

Notice of application for tax deed, 15-18-212.

Period of redemption for property sold for delinquent irrigation district assessment, 85-7-2163.

15-18-112. Redemption from property tax lien. (1) Except as provided in subsection (3), in all cases where a property tax lien has been acquired, the purchaser may pay the subsequent taxes assessed against the property.

(2) Upon the redemption of the property from the property tax lien, the redemptioner shall, in addition to the amount for which the property tax lien was sold, including penalties, interest, and costs, pay the subsequent taxes assessed, with interest and penalty thereon at the rate established for delinquent taxes in 15-16-102.

(3) The property tax lien may also be redeemed for a particular tax year by a partial payment of that tax year as provided in 15-16-102(5) if:

(a) the property tax lien for the year in which the partial payment is made is owned by the county; and

(b) the tax deed has not been issued pursuant to 15-18-211.

History: En. Sec. 17, Ch. 587, L. 1987; amd. Sec. 4, Ch. 704, L. 1989.

Cross-References

Payment of delinquent irrigation district assessments credited against redemption, 85-7-2136.

Payment of delinquent drainage district assessments credited against redemption, 85-8-601.

15-18-113. Treasurer to record redemptions. Upon payment of all delinquent taxes, including penalties, interest, and costs, by the person to whom taxes were assessed or his agent to the county treasurer and refunded to the person listed as purchaser as provided in 15-17-212(1)(e), 15-17-213, or 15-17-214 or distributed as provided in 15-18-114, the word "redeemed", the date, and the name of the redemptioner must be marked by the county treasurer on the tax sale certificate or in the record required in 15-17-214.

History: En. Sec. 18, Ch. 587, L. 1987.

15-18-114. Distribution of redemption proceeds. (1) When a property tax lien for which the county is listed as purchaser is redeemed, the money received from the redemption, including penalties and interest but not costs, must be distributed to the credit of the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed.

(2) (a) When a property tax lien for which the recorded purchaser is other than the county is redeemed, the county treasurer shall distribute to the person listed as the purchaser on the tax sale certificate and in the record kept by the county treasurer the amount the purchaser paid the county for the property tax lien plus any subsequent amount paid pursuant to 15-18-112 plus interest, as specified in 15-16-102, from the date of payment until the date of redemption. Any money remaining after distributing redemption proceeds to the purchaser other than the county must be distributed pursuant to subsection (1).

(b) (i) The distribution must be made by certified mail, return receipt requested, by the county treasurer to the purchaser at the address listed on the tax sale certificate as provided in 15-17-212(1)(e).

(ii) If the money distributed to the purchaser is returned unopened to the county treasurer, the treasurer shall publish once a week for 2 consecutive weeks in the official newspaper of the county a notice stating that:

(A) the county treasurer is in possession of money belonging to the purchaser for the redemption of the delinquency on the property named in the tax sale certificate;

(B) the money will be held by the county treasurer for a period of 1 year from the date of publication; and

(C) if the money is not claimed by the purchaser within the 1-year period, the purchaser relinquishes all claim to the money and the money will be credited to the county general fund.

(3) The publication required in subsection (2)(b)(ii) must be made at least annually, but the 1-year period described in subsection (2)(b)(ii)(B) may not begin until the date of publication.

(4) The county treasurer shall keep an accurate account of all money paid in redemption, including a separate accounting of other delinquent taxes, interest, penalties, and costs, and when and to whom distributed.

History: En. Sec. 19, Ch. 587, L. 1987; amd. Sec. 3, Ch. 704, L. 1989; amd. Sec. 2, Ch. 97, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 97 in (2)(b)(i), after "mail", inserted "return receipt requested".

Cross-References

Distribution of redemption money for municipal taxes, 7-6-4414.

Definition of "school district", 20-15-403.

Distribution of redemption money to irrigation district, 85-7-2154.

Part 2
Issuing a Tax Deed

Part Cross-References

Injunction to prevent sale or deed for nonpayment of taxes that would lessen value of insurer under Insurers Supervision, Rehabilitation, and Liquidation Act, 33-2-1309.

Issuance of certificate of purchase when tax deed issued for land being purchased from state, 77-2-315.

Issuance of tax deed for delinquent irrigation district assessment, 85-7-2159, 85-7-2163.

15-18-201 through 15-18-205. Repealed. Sec. 59, Ch. 587, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

15-18-201. En. Sec. 127, p. 113, L. 1891; re-en. Sec. 3894, Pol. C. 1895; re-en. Sec. 2650, Rev. C. 1907; re-en. Sec. 2206, R.C.M. 1921; Cal. Pol. C. Sec. 3785; re-en. Sec. 2206, R.C.M. 1935; R.C.M. 1947, 84-4137.

15-18-202. En. Sec. 128, p. 114, L. 1891; amd. Sec. 3895, Pol. C. 1895; amd. Sec. 1, Ch. 79, L. 1905; re-en. Sec. 2651, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1917; amd. Sec. 1, Ch. 87, L. 1921; re-en. Sec. 2209, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1929; amd. Sec. 1, Ch. 190, L. 1933; re-en. Sec. 2209, R.C.M. 1935; R.C.M. 1947, 84-4151; amd. Sec. 14, Ch. 526, L. 1983.

15-18-203. En. Sec. 1, Ch. 92, L. 1927; amd. Sec. 1, Ch. 49, L. 1933; re-en. Sec. 2209.1, R.C.M. 1935; R.C.M. 1947, 84-4152.

15-18-204. En. Sec. 129, p. 114, L. 1891; re-en. Sec. 3896, Pol. C. 1895; re-en. Sec. 2652, Rev. C. 1907; re-en. Sec. 2212, R.C.M. 1921; re-en. Sec. 2212, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1947, 84-4156.

15-18-205. En. Sec. 1748, 5th Div. Comp. Stat. 1887; amd. Sec. 130, p. 115, L. 1891; re-en. Sec. 3897, Pol. C. 1895; re-en. Sec. 2653, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1919; re-en. Sec. 2213, R.C.M. 1921; Cal. Pol. C. Sec. 3786; re-en. Sec. 2213, R.C.M. 1935; R.C.M. 1947, 84-4157.

15-18-206 through 15-18-210 reserved.

15-18-211. Tax deed — fee. (1) Except as provided in subsection (3), if the property tax lien is not redeemed in the time allowed under 15-18-111, the county treasurer shall grant the purchaser a tax deed for the property. The deed must contain the same information as is required in a tax sale certificate under 15-17-212, except the description of the property must be the full legal description, and a statement that the property tax lien was not redeemed during the redemption period provided in 15-18-111.

(2) (a) Except as provided in subsection (2)(b), the county treasurer shall charge the purchaser $25 plus all actual costs incurred by the county in giving the notice or assisting another purchaser or assignee in giving the notice required in 15-18-212 for making the deed, which fee must be deposited in the county general fund.

(b) If the purchaser is the county, no fee may be charged for making the deed.

(c) Reasonable costs incurred by the county in searching the county records to identify persons entitled to notice are considered part of the actual costs of the notice provided in subsection (2)(a).

(3) If the purchaser is the county and no assignment has been made, the county treasurer may not issue a tax deed to the county unless the board of county commissioners, by resolution, directs him to issue a tax deed.

(4) Deeds issued to purchasers must be recorded by the county clerk as provided in Title 7, chapter 4, part 26, except that when the county is the

purchaser and subsequent tax deed holder, the county clerk may not charge a fee for recording the deed.

History: **En. Sec. 20, Ch. 587, L. 1987.**

15-18-212. Notice — proof of notice — penalty for failure to notify. (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, an assignment has not been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk shall provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), additional notice need not be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall notify the purchaser or assignee of the obligation to give notice under subsection (1)(b). The notice of obligation may be sent by certified mail, return receipt requested, to the purchaser or assignee at the address contained on the tax sale certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.

(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall cancel the property tax lien evidenced by the tax sale certificate or the assignment.

(4) The notice required under subsections (1) and (2) must be made by certified mail, return receipt requested, to each interested party and the

current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;

(b) a statement that the address of the interested party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1), (2), and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed that a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) Proof of notice in whatever manner given must be filed with the county clerk. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county, the proof of notice

must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(8) A county or any officer of a county may not be held liable for any error of notification.

History: En. Sec. 21, Ch. 587, L. 1987; amd. Sec. 10, Ch. 83, L. 1989; amd. Sec. 8, Ch. 704, L. 1989; amd. Sec. 1, Ch. 181, L. 1991; amd. Sec. 3, Ch. 97, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 97 in second sentence of (3)(a) and first sentence of (4), after "mail", inserted "return receipt requested"; and made minor changes in style.

Cross-References

Fee for tax deed, 7-6-2131.

Time for redemption, 15-18-111.

County authorized to acquire property by taxation, 70-1-204.

15-18-213. Form of tax deed — prima facie evidence. (1) The form of a tax deed issued under the provisions of this chapter, executed by a county treasurer, must be made in substance as follows:

This deed is made by .... (name of county treasurer), county treasurer of the county of .... (name of county), in the state of Montana, to .... (name of purchaser, the purchaser's agent, or assignee), as provided by the laws of the state of Montana:

Whereas, there was assessed for .... (year) the following real property .... (description of the property); and

Whereas, the taxes for .... (year) levied against the property amounted to $..........; and

Whereas, the taxes were not paid and a property tax lien for the payment of the taxes attached and was sold to .... (name of purchaser or the purchaser's agent or assignee) on .... (date, including year) for the sum of $.........., which amount included delinquent taxes in the amount of $.........., penalties in the amount of $.........., interest in the amount of $.........., and other costs in the amount of $..........; and

Whereas, a tax sale certificate was duly issued and filed or the sale otherwise recorded as required by law; and

Whereas, notice was given to interested parties in accordance with 15-18-212 that the issuance of a tax deed was pending; and

Whereas, the property tax lien has not been redeemed by .... (name of former owner) or any other person entitled to redeem it.

Now, therefore, I, ... (treasurer's name), county treasurer of the county of ...., in the state of Montana, in consideration of the sum of $.......... paid, hereby grant to .... (name of purchaser or the purchaser's agent or assignee) all the property situated in .... County, state of Montana, described in this document.

Witness my hand on this date .... (date, including year).

. . . . County Treasurer
. . . . County

(2) A tax deed executed in substantially the form provided in subsection (1) is prima facie evidence that:

(a) the property was assessed as required by law;

(b) the taxes were levied in accordance with law;

(c) the taxes were not paid when due;

(d) notice of tax sale was given and a property tax lien was sold at the proper time and place as provided by law;

(e) the property was not redeemed, and proper notice of a pending tax deed issuance was made as required by law;

(f) the person who executed the deed was legally authorized to do so; and

(g) if the real property was sold to pay delinquent taxes on personal property, the real property belonged to the person liable to pay the personal property tax.

History: En. Sec. 22, Ch. 587, L. 1987; amd. Sec. 4, Ch. 97, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 97 in (1), in fifth "Whereas" clause before "notice", deleted "not less than 60 days or more than 90 days prior to this date" and after "parties" inserted "in accordance with 15-18-212" and inserted sixth "Whereas" clause concerning non-redemption; and made minor changes in style.

15-18-214. Effect of deed. (1) A deed issued under this chapter conveys to the grantee absolute title to the property described therein as of the date of the expiration of the redemption period, free and clear of all liens and encumbrances, except:

(a) when the claim is payable after the execution of the deed and:

(i) a property tax lien attaches subsequent to the tax sale; or

(ii) a lien of any special, rural, local improvement, irrigation, or drainage assessment is levied against the property;

(b) when the claim is an easement, servitude, covenant, restriction, reservation, or similar burden lawfully imposed on the property; or

(c) when the land is owned by the United States, this state, or a subdivision of this state.

(2) Under the conditions described in subsection (1), the deed is prima facie evidence of the right of possession accrued as of the date of expiration of the period for redemption or the date upon which a tax deed was otherwise issued.

History: En. Sec. 23, Ch. 587, L. 1987; amd. Sec. 5, Ch. 704, L. 1989.

15-18-215. Form of notice that tax deed may issue. Section 15-18-212 requires that notice be given to all persons considered interested parties and to the current occupant of property that may be lost to a tax deed. The notice may be made as follows:

NOTICE THAT A TAX DEED MAY BE ISSUED

TO: . . . .
(Name) (Address, when unknown, so state)

Pursuant to section 15-18-212, Montana Code Annotated, NOTICE IS HEREBY GIVEN:

1. As a result of a property tax delinquency, a property tax lien exists on the following described real property in which you may have an interest:

. . . .

. . . .

2. The property taxes became delinquent on ....

3. The property tax lien was attached as the result of a tax sale held on ....

4. The property tax lien was purchased at a tax sale on .... by .... (Name) .... (Address).

5. The lien was subsequently assigned to ....

6. As of the date of this notice, the amount of tax due is:

TAXES: . . . .
PENALTY: . . . .
INTEREST: . . . .
COST: . . . .
TOTAL: . . . .

7. For the property tax lien to be liquidated, the total amount listed in paragraph 6 must be paid by ...., which is the date that the redemption period expires or expired.

8. If all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to ...., which is the date the redemption period expires, or on or prior to the date on which the county treasurer will otherwise issue a tax deed, a tax deed may be issued to the purchaser on the day following the date that the redemption period expires or on the date the county treasurer will otherwise issue a tax deed.

9. The business address and telephone number of the county treasurer who is responsible for issuing the tax deed is: .... County Treasurer, ... (Address), ... (Telephone).

FURTHER NOTICE FOR THOSE PERSONS LISTED ABOVE WHOSE ADDRESSES ARE UNKNOWN:

1. The address of the interested party is unknown.

2. The published notice meets the legal requirements for notice of a pending tax deed issuance.

3. The interested party's rights in the property may be in jeopardy.

DATED at .... this .... (Date).

. . . .
Signature

History: En. Sec. 5, Ch. 97, L. 1993.

15-18-216. Form of proof of notice. Section 15-18-212 requires that proof of notice must be filed with the county clerk. The proof of notice may be made as follows:

PROOF OF NOTICE

I, ... (Name and Address), acting as or on behalf of the owner of the property tax lien, have complied with the notice requirements of Title 15, chapter 18, MCA, as follows:

1. A "Notice of Issuance of Tax Deed" was mailed to the owners, current occupant, and interested parties, as that term is defined in section 15-18-111(3), MCA. A copy of each notice is attached or is on file in the office of the county clerk.

2. The notices were mailed by certified mail, return receipt requested. Copies of the return receipts are attached or are on file in the office of the county clerk.

3. Notice was given to interested parties with unknown addresses by publishing in the official newspaper of the county, which is ...., on .... and .... Proof of publication is attached.

DATED: ....

. . . .
(Signature)

SUBSCRIBED AND SWORN TO before me this .... (Date).

. . . .
Notary Public for the State of Montana
Residing in ....
My Commission Expires ....

History: En. Sec. 6, Ch. 97, L. 1993.

Part 3

Action for Tax Deed (Repealed. Sec. 59, Ch. 587, L. 1987)

15-18-301 through 15-18-309. Repealed.

Compiler's Comments

Histories of Repealed Sections:

15-18-301. En. Sec. 1, Ch. 176, L. 1933; re-en. Sec. 2215.1, R.C.M. 1935; R.C.M. 1947, 84-4162.

15-18-302. En. Sec. 2, Ch. 176, L. 1933; re-en. Sec. 2215.2, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1937; R.C.M. 1947, 84-4163.

15-18-303. En. Sec. 3, Ch. 176, L. 1933; re-en. Sec. 2215.3, R.C.M. 1935; R.C.M. 1947, 84-4164; amd. Sec. 67, Ch. 575, L. 1981.

15-18-304. En. Sec. 4, Ch. 176, L. 1933; re-en. Sec. 2215.4, R.C.M. 1935; R.C.M. 1947, 84-4165.

15-18-305. En. Sec. 5, Ch. 176, L. 1933; re-en. Sec. 2215.5, R.C.M. 1935; amd. Sec. 17, Ch. 52, L. 1977; amd. Sec. 8, Ch. 126, L. 1977; R.C.M. 1947, 84-4166; amd. Sec. 11, Ch. 581, L. 1979.

15-18-306. En. Sec. 6, Ch. 176, L. 1933; re-en. Sec. 2215.6, R.C.M. 1935; R.C.M. 1947, 84-4167.

15-18-307. En. Sec. 7, Ch. 176, L. 1933; re-en. Sec. 2215.7, R.C.M. 1935; R.C.M. 1947, 84-4168.

15-18-308. En. Sec. 8, Ch. 176, L. 1933; re-en. Sec. 2215.8, R.C.M. 1935; amd. Sec. 9, Ch. 126, L. 1977; R.C.M. 1947, 84-4169.

15-18-309. En. Sec. 9, Ch. 176, L. 1933; re-en. Sec. 2215.9, R.C.M. 1935; amd. Sec. 1, Ch. 63, L. 1937; R.C.M. 1947, 84-4170.

Part 4

Quiet Title

15-18-401 through 15-18-404. Repealed. Sec. 59, Ch. 587, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

15-18-401. En. Sec. 131, p. 115, L. 1891; re-en. Sec. 3898, Pol. C. 1895; re-en. Sec. 2654, Rev. C. 1907; amd. Sec. 1, Ch. 50, L. 1909; re-en. Sec. 2214, R.C.M. 1921; Cal. Pol. C. Sec. 3787; amd. Sec. 1, Ch. 85, L. 1927; re-en. Sec. 2214, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1947; R.C.M. 1947, 84-4158(part).

15-18-402. En. Sec. 131, p. 115, L. 1891; re-en. Sec. 3898, Pol. C. 1895; re-en. Sec. 2654, Rev. C. 1907; amd. Sec. 1, Ch. 50, L. 1909; re-en. Sec. 2214, R.C.M. 1921; Cal. Pol. C. Sec. 3787; amd. Sec. 1, Ch. 85, L. 1927; re-en. Sec. 2214, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1947; R.C.M. 1947, 84-4158(part).

15-18-403. En. Sec. 132, p. 115, L. 1891; re-en. Sec. 3899, Pol. C. 1895; re-en. Sec. 2655, Rev. C. 1907; re-en. Sec. 2215, R.C.M. 1921; Cal. Pol. C. Sec. 3788; amd. Sec. 2, Ch. 85, L. 1927; re-en. Sec. 2215, R.C.M. 1935; R.C.M. 1947, 84-4161.

15-18-404. En. Sec. 4, Ch. 65, L. 1933; re-en. Sec. 2208.4, R.C.M. 1935; R.C.M. 1947, 84-4142.

15-18-405 through 15-18-410 reserved.

15-18-411. Action to quiet title to tax deed — notice. (1) (a) In an action brought to set aside or annul any tax deed or to determine the rights of a purchaser to real property claimed to have been acquired through tax proceedings or a tax sale, the purchaser, upon filing an affidavit, may obtain from the court an order directed to the person claiming to:

(i) own the property;

(ii) have any interest in or lien upon the property;

(iii) have a right to redeem the property; or

(iv) have rights hostile to the tax title.

(b) The person described in subsections (1)(a)(i) through (1)(a)(iv) is referred to as the true owner.

(c) Except as provided in subsection (1)(d), the order described in subsection (1)(a) may command the true owner to:

(i) deposit with the court for the use of the purchaser:

(A) the amount of all taxes, interest, penalties, and costs that would have accrued if the property had been regularly and legally assessed and taxed as the property of the true owner and was about to be redeemed by the true owner; and

(B) the amount of all sums reasonably paid by the purchaser following the order and after 3 years from the date of the tax sale to preserve the property or to make improvements thereon while in the purchaser's possession, as the total amount of the taxes, interest, penalties, costs, and improvements is alleged by the plaintiff and as must appear in the order; or

(ii) show cause on a date to be fixed in the order, not exceeding 30 days from the date of the order, why such payment should not be made.

(d) The deposit provided for in subsection (1)(c) may not be required of a person found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(2) The affidavit must list the name and address of the true owner and whether he is in the state of Montana, if known to the plaintiff, or state that the address of the true owner is not known to the plaintiff.

(3) (a) The order must be filed with the county clerk and a copy served personally upon each person shown in the affidavit claiming to be a true owner and who is, at that time, known to be in the state of Montana.

(b) Jurisdiction is acquired over all other persons by:

(i) publishing the order once in the official newspaper of the county;

(ii) posting the order in three public places in the county at least 10 days prior to the hearing; and

(iii) giving a copy to the county treasurer.

History: En. Sec. 24, Ch. 587, L. 1987; amd. Sec. 1, Ch. 104, L. 1991.

Cross-References

Costs allowed in actions involving title of real estate, 25-10-101, 25-10-102.

15-18-412. Procedure in tax deed quiet title action. (1) Upon the hearing of the order to show cause, the court has jurisdiction to determine the amount to be deposited and to make an order that the same be paid to the court within a period not exceeding 30 days after the order is made.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), if the amount is not paid within the time fixed by the court, the true owner is considered to have waived any defects in the tax proceedings and any right of redemption. In the event of waiver, the true owner has no claim of any kind against the state or purchaser and a decree must be entered in the action quieting the title of the purchaser as against the true owner.

(b) The proceedings are void if the taxes were not delinquent or have been paid.

(c) A deposit is not required if the true owner is found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(3) If payment is made to the court and the true owner is successful in the action and the tax proceedings are declared void, the amount deposited with the court must be paid to the purchaser.

(4) If the purported true owner is not successful in the action and the title of the purchaser is sustained, the money must be returned to the purported true owner.

(5) In any action brought by a purchaser to quiet title, several tracts of land, whether contiguous or noncontiguous or owned by different defendants, may be set forth in one complaint. All persons claiming any title to, interest in, or lien upon any of the premises or any part thereof may be joined as defendants, even though their claims are independent, are not in common, and do not cover the same tracts. The procedure in such an action must follow, as nearly as practicable, the procedure specified in 70-28-101 through 70-28-109.

(6) In the final judgment, the court shall also determine the rights resulting from any additional taxes on the property accruing or being paid by either party during the pendency of the suit.

(7) In the quiet title action, the court has complete jurisdiction to fix the amount of taxes that should have been paid, including penalties, interest, and costs, and to determine all questions necessary in granting full relief, including the power to order any assessor or other tax officer to make and certify to the court a corrected or new assessment or to do any other act necessary to enable the court to do complete justice. Errors may be reviewed on appeal from the final judgment.

History: En. Sec. 25, Ch. 587, L. 1987; amd. Sec. 2, Ch. 104, L. 1991.

15-18-413. Title conveyed by deed — defects. (1) All deeds executed more than 3 years after the applicable tax sale convey to the grantee absolute title to the property described in the deed as of 3 years following the date of sale of the property interest at the tax sale.

(2) The conveyance includes:

(a) all right, title, interest, estate, lien, claim, and demand of the state of Montana and of the county in and to the property; and

(b) the right, if the tax deed, tax sale, or any of the tax proceedings upon which the deed may be based are attacked and held irregular or void, to recover the unpaid taxes, interest, penalties, and costs that would accrue if the tax proceedings had been regular and it was desired to redeem the property.

(3) The tax deed is free of all encumbrances except as provided in 15-18-214(1)(a) through (1)(c).

(4) A tax deed is prima facie evidence of the right of possession accruing as of the date of the expiration of the redemption period described in 15-18-111.

(5) If any tax deed or deed purporting to be a tax deed is issued more than 3 years and 30 days after the date of the sale of the property interest at the applicable tax sale, the grantee may publish in the official newspaper of the county, once a week for 2 consecutive weeks, a notice entitled "Notice of Claim of a Tax Title". The notice must:

(a) describe all property claimed to have been acquired by a tax deed;

(b) contain an estimate of the amount due on the property for delinquent taxes, interest, penalties, and costs;

(c) contain a statement that for further specific information, reference must be made to the records in the office of the county treasurer;

(d) list the name and address of record of the person in whose name the property was assessed or taxed; and

(e) contain a statement that demand is made that the person assessed or taxed must, within 30 days after the first publication of the notice, pay to the claimant or to the county treasurer for use by the claimant the amount of taxes, interest, penalties, and costs as the same appear in the records of the county treasurer or bring a suit to quiet the true owner's title or to set aside the tax deed.

(6) A mistake in the amount or in any name specified in the notice does not invalidate the notice.

(7) (a) If within the 30-day period the taxes, interest, penalties, and costs are not paid or a quiet title action is not brought, all defects in the tax proceedings and any right of redemption is considered waived. Except as provided in subsection (7)(b), after the 30-day period the title to the property described in the notice and in the tax deed is valid and binding, irrespective of any irregularities, defects, omissions, or total failure to observe any of the provisions of the laws of Montana regarding the assessment, levying of taxes, or sale of property for taxes and the giving of notices, whether or not such irregularities, defects, omissions, or failures could void the proceedings.

(b) The proceedings in subsection (7)(a) are void if the taxes were not delinquent or have been paid.

History: En. Sec. 26, Ch. 587, L. 1987.

CHAPTERS 19 THROUGH 22

RESERVED

CHAPTER 23

CENTRALLY ASSESSED PROPERTY

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Chapter Cross-References

Property tax administration, Art. VIII, sec. 3, Mont. Const.

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Part 1

General Provisions

Part Cross-References

Metal mines gross proceeds to be assessed under this part, 15-23-807.

15-23-101. Properties centrally assessed. The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(3) all property of scheduled airlines;

(4) the net proceeds of mines and of oil and gas wells;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) which is subject to the provisions of Title 15, chapter 24, part 12.

History: En. 84-7801 by Sec. 1, Ch. 98, L. 1977; R.C.M. 1947, 84-7801; amd. Sec. 4, Ch. 686, L. 1979; amd. Sec. 3, Ch. 478, L. 1981; amd. Sec. 4, Ch. 683, L. 1983; amd. Sec. 2, Ch. 10, Sp. L. July 1992.

15-23-102. Independent appraisal option — notice of assessment — opportunity for conference — appeal. (1) The department of revenue may have property subject to the provisions of this chapter assessed by a qualified independent appraiser when both the department and the owner of the property subject to the assessment agree in writing:

(a) on a particular independent appraiser to do an appraisal;

(b) to share the costs of the independent appraisal; and

(c) to accept the results of the appraisal.

(2) (a) After assessing property under 15-23-101, the department shall notify the owner and any purchaser under contract for deed of such property, in writing, of the assessed value it has determined.

(b) Within 20 days following notification, the taxpayer may demand a review of the validity of the department's assessment. The department shall conduct an assessment review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act. However, a party has the right of discovery prior to any assessment revision review conference. Upon consideration following such conference, the department may revise the assessment.

(c) Appeals from the final decision may be taken to the state tax appeal board.

History: En. 84-7802 by Sec. 2, Ch. 98, L. 1977; R.C.M. 1947, 84-7802; (1)En. Sec. 1, Ch. 253, L. 1983; amd. Sec. 15, Ch. 526, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

State Tax Appeal Board, Title 15, ch. 2.

15-23-103. Due date of reports and returns — extensions. (1) Except as provided in subsection (2) and 15-23-602, each report or return described in 15-23-301, 15-23-402, 15-23-502, 15-23-701, or 15-23-517 must be delivered to the department on or before March 31 each year.

(2) Each report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Each report described in 15-23-201, 15-23-212, 15-23-515, or 15-23-516 must be delivered to the department before April 15 each year.

(4) The department may for good cause extend the time for filing a return or report for not more than 30 days.

History: En. 84-7803 by Sec. 3, Ch. 98, L. 1977; amd. Sec. 2, Ch. 494, L. 1977; R.C.M. 1947, 84-7803; amd. Sec. 1, Ch. 606, L. 1983; amd. Sec. 5, Ch. 531, L. 1989; amd. Sec. 5, Ch. 695, L. 1991; amd. Sec. 3, Ch. 10, Sp. L. July 1992; amd. Sec. 5, Ch. 506, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 506 in (1) inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

15-23-104. Failure to file — estimate by department — penalty. (1) If any person fails to file a report or return within the time established in 15-23-103 or by such later date as the department may approve, the department shall estimate the value of the property to have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303. In estimating value under this section, the department may subpoena a person or his agent as specified in 15-1-302. An assessment pursuant to parts 5 through 8 of this chapter based on estimated value or imputed value is subject to review under 15-1-211. Each month or part of a month a report is delinquent, the department shall impose and collect a $25 penalty, the total not to exceed $200, and shall deposit such penalty to the credit of the general fund. The department will also inform its agents in the counties of the delinquency, and, except as provided in subsection (2), the agents shall assess a penalty of 1% of the tax due for each month or part of a month the report is delinquent.

(2) For a delinquency in reporting under 15-23-212, the department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent.

History: En. 84-7804 by Sec. 4, Ch. 98, L. 1977; R.C.M. 1947, 84-7804; amd. Sec. 2, Ch. 606, L. 1983; amd. Sec. 3, Ch. 357, L. 1985; amd. Sec. 6, Ch. 811, L. 1991; amd. Sec. 4, Ch. 10, Sp. L. July 1992.

15-23-105. Apportionment among counties. The department shall apportion the value of property assessed under 15-23-101, 15-23-202, or 15-23-403, other than railroad car company property, among the counties in which such property is located. Apportionment shall be on a mileage basis or on the basis of the original installed cost of the centrally assessed property located in the respective counties. If the property is of such a character that its value cannot reasonably be apportioned on the basis of mileage or on the basis of the original installed cost of the centrally assessed property located in the respective counties, the department may adopt such other method or basis of apportionment as may be just or proper.

History: En. 84-7805 by Sec. 5, Ch. 98, L. 1977; R.C.M. 1947, 84-7805; amd. Sec. 5, Ch. 686, L. 1979; amd. Sec. 5, Ch. 10, Sp. L. July 1992.

15-23-106. Transmission to the counties. (1) On or before July 1, the department shall transmit to its agent in each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-202, apportioned to the county, including the length or other description of the property;

(b) the assessed value of utility property, as determined under 15-23-303, apportioned to the county, including the length or other description of the property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county must be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 15-23-503, 15-23-505, 15-23-515, 15-23-516, 15-23-517, 15-23-603, and 15-23-605; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The agent of the department shall enter the assessed values transmitted in the assessment book in a manner prescribed by the department.

History: En. 84-7806 by Sec. 6, Ch. 98, L. 1977; R.C.M. 1947, 84-7806; amd. Sec. 1, Ch. 238, L. 1981; amd. Sec. 6, Ch. 20, L. 1985; amd. Sec. 6, Ch. 531, L. 1989; amd. Sec. 6, Ch. 695, L. 1991; amd. Sec. 6, Ch. 506, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 506 in (1)(d) inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

Cross-References

Transmittal of airline property tax — state airports, 67-1-303.

15-23-107. Amended assessment — transmission to counties. Whenever the valuation of centrally assessed property is revised under 15-8-601 or 15-23-102(2), the department shall, within 15 days following the final decision or order, transmit a statement of the revised assessment to its agent or the county officer then having custody of the assessment book in the county where the property is located. The revision shall be immediately entered in the assessment book.

History: En. 84-7807 by Sec. 7, Ch. 98, L. 1977; R.C.M. 1947, 84-7807.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-23-108. Rulemaking authority. The department of revenue may adopt rules necessary for the taxation of property under this chapter.

History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(2).

15-23-109 and 15-23-110 reserved.

15-23-111. Centrally administered tax-exempt property. The possession or beneficial use of tax-exempt property that exists in more than one county or more than one state must be administered under the provisions of this chapter.

History: En. Sec. 2, Ch. 683, L. 1983.

Cross-References

State and other exempt property, Title 15, ch. 24, part 12.

15-23-112 through 15-23-114 reserved.

15-23-115. Interest. If the department determines that a taxpayer has incorrectly reported a value under 15-23-502, 15-23-515, 15-23-516, 15-23-517, 15-23-602, 15-23-701, or 15-23-802, the department shall inform its agents at the county level of the determination, and if any additional tax is due, there must be added to the tax until paid in full interest at the rate of 1% a month or fraction of a month from the date the original tax was due and payable. A taxpayer subject to imposition of interest pursuant to this section is not subject to the penalty and interest provisions contained in 15-16-102.

History: En. Sec. 1, Ch. 112, L. 1983; amd. Sec. 7, Ch. 531, L. 1989; amd. Sec. 7, Ch. 695, L. 1991; amd. Sec. 7, Ch. 506, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 506 in first sentence inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

15-23-116. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

Part 2
Railroads

Part Cross-References

Taxable percentage of property of centrally assessed companies, 15-6-141.

Tax on companies regulated by the Public Service Commission to fund Consumer Counsel, 69-1-223.

Consolidated railroads subject to taxation, 69-14-512.

Leased or purchased railroads subject to taxation, 69-14-513.

Railroads extending lines into state subject to taxation, 69-14-536.

15-23-201. Assessment of railroads. The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating any railroad in more than one county in this state or more than one state must on or before April 15 each year furnish the department a statement signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending December 31 immediately preceding:

(1) the whole number of miles of railroad in the state and, where the line is partly out of the state, the whole number of miles without the state and the whole number within the state, owned or operated by such corporation, person, or association;

(2) the value of the roadway, roadbed, and rails of the whole railroad and the value of the same within the state;

(3) the width of the right-of-way;

(4) the number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state;

(5) the number, kind, and value of rolling stock owned and operated in the state;

(6) the number, kind, and value of rolling stock used in the state but not owned by the party making the returns;

(7) the number, kind, and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns or by and upon other railroads;

(8) the whole number of sidetracks in each county, including the number of miles of track in each railroad yard in the state;

(9) the number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof of all engines; passenger, mail, express, baggage, freight, and other cars; or property owned or leased by such corporation, person, or association;

(10) the number of sleeping and dining cars not owned by such corporation, person, or association but used in operating the railroads of such corporation, person, or association in the state or on the line of the road without the state during each month of the year for which the return is made; also the number of miles each month the cars have been run or operated within and without the state;

(11) a description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road has once been given, no other annual description thereof is necessary unless the road has been changed. Whenever the road or any portion of the road is advertised to be sold or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad or the right-of-way for the same. If such statement is not furnished as above provided, the assessment made by the department upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12) the gross earnings of the entire road;

(13) the gross earnings of the road within the state and, if the railroad is let to other operators, how much was derived by the lessor as rental;

(14) the cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;

(15) net income for such year and amount of dividend declared;

(16) capital stock authorized;

(17) capital stock paid in;

(18) funded debt;

(19) number of shares authorized;

(20) number of shares of stock issued;

(21) number, kind, and total number of miles traveled within the state by railroad cars owned by railroad car companies; and

(22) any other facts the department may require.

History: En. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 43, p. 87, L. 1891; re-en. Sec. 3737, Pol. C. 1895; re-en. Sec. 2556, Rev. C. 1907; re-en. Sec. 2131, R.C.M. 1921; Cal. Pol. C. Sec. 3664; amd. Sec. 1, Ch. 7, L. 1925; re-en. Sec. 2131, R.C.M. 1935; amd. Sec. 23, Ch. 516, L. 1973; amd. Sec. 10, Ch. 98, L. 1977; amd. Sec. 1, Ch. 494, L. 1977; R.C.M. 1947, 84-801; amd. Sec. 6, Ch. 10, Sp. L. July 1992.

Cross-References

Where railroad property assessed, 15-8-407.

Due date of report, 15-23-103.

15-23-202. Assessment — how made. (1) The department must assess the franchise, roadway, roadbed, rails, rolling stock, and all other operating properties of all railroads operated in more than one county or more than one state. All rolling stock must be assessed in the name of the person owning, leasing, or using the same. Assessment must be made to the person owning or leasing or using the same and must be made upon the entire railroad within the state. The depots, stations, shops, and buildings erected upon the space covered by the right-of-way and all other property owned or leased by such person, except as above provided, shall be assessed by the department.

(2) In determining the taxable value of railroad property, the department shall determine the percentage rate "R" provided for in 15-6-145 in order to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended.

History: En. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 44, p. 89, L. 1891; re-en. Sec. 3738, Pol. C. 1895; re-en. Sec. 2557, Rev. C. 1907; re-en. Sec. 2132, R.C.M. 1921; Cal. Pol. C. Sec. 3665; re-en. Sec. 2132, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1939; amd. Sec. 62(a), Ch. 405, L. 1973; amd. Sec. 11, Ch. 98, L. 1977; R.C.M. 1947, 84-802; amd. Sec. 6, Ch. 686, L. 1979; amd. Sec. 2, Ch. 367, L. 1981; amd. Sec. 8, Ch. 743, L. 1985.

Cross-References

Department to apportion value among counties, 15-23-105.

Value to be transmitted to counties, 15-23-106.

15-23-203 through 15-23-210 reserved.

15-23-211. Definitions. As used in 15-23-211 through 15-23-216, unless the context requires otherwise, the following definitions apply:

(1) "Average levy" means the average statewide rate of taxation on commercial and industrial property.

(2) "Person" includes an individual, firm, association, company, partnership, corporation, joint-stock company, agency, syndicate, or cooperative.

(3) "Private railroad cars" means all railroad cars that:

(a) are not owned by a railroad company operating in this state;

(b) are used for transporting persons or freight; and

(c) are not otherwise assessed for property taxation in this state.

(4) "Railroad car company" means any person, other than a railroad company, engaged in operating, leasing, or furnishing private railroad cars, whether or not owned by that person, for the transportation of persons or freight over railroad lines located wholly or partially within this state.

History: En. Sec. 7, Ch. 10, Sp. L. July 1992; amd. Sec. 1, Ch. 532, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 532 in definition of average levy, after "means the", inserted "average statewide" and after "taxation" substituted "on commercial and industrial property" for "determined under 15-24-103". Amendment effective April 24, 1993.

Effective Date — Reproactive Applicability: Section 2, Ch. 532, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990." Approved April 24, 1993.

15-23-212. Annual report. Each railroad car company shall, annually and within the time requirements of 15-23-103(3) and (4), file with the department of revenue a report, signed and sworn to by one of its designated officers, that provides the following information as of the preceding December 31:

(1) the name and nature of the business of the company;

(2) the number, kind, acquisition cost, date of acquisition, and name of owner of its private railroad cars;

(3) the cost of additions and betterment, special equipment, racks, protective equipment, or any other modification or improvement to a car since acquisition;

(4) the total car miles traveled, loaded and unloaded, within the state during the calendar year preceding the date of filing;

(5) the total car miles traveled, loaded and unloaded, within and outside of the state during the calendar year preceding the date of filing;

(6) the average number of miles traveled by each class of car during the year;

(7) the description and location of real and personal property that is owned by the railroad car company and that is subject to taxation within this state; and

(8) any other facts the department may require.

History: En. Sec. 8, Ch. 10, Sp. L. July 1992.

15-23-213. Assessment — allocation — taxable value. (1) The department of revenue shall assess the property in the name of the railroad car company owning the property unless the property is reported by another person leasing or operating the property.

(2) The allocation of property to this state must be made on the basis of the car miles traveled within the state to the total car miles traveled unless the department by administrative rule adopts a different formula.

(3) In determining taxable value, the department shall use the percentage rate "R", as provided in 15-6-145, to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended.

History: En. Sec. 9, Ch. 10, Sp. L. July 1992.

15-23-214. Determination of tax — payment. (1) On or before the third Monday in October, the department of revenue shall compute the tax on railroad car company property by multiplying the taxable value of the property by the average levy.

(2) After determining the tax, the department shall send to the last-known address of each railroad car company subject to taxation a written notice, postage prepaid, showing the amount of taxes due for the current year and any delinquent amount for prior years. The notice must include the taxable value of the property and the average levy used to compute the tax.

(3) The tax is due and payable to the department under the provisions of 15-16-102. A tax not received by the department within the time requirements of 15-16-102 is delinquent and subject to penalty and interest under that section.

History: En. Sec. 10, Ch. 10, Sp. L. July 1992.

15-23-215. Deposit of taxes. All taxes, penalties, and interest collected by the department of revenue under 15-23-211 through 15-23-216 must be deposited in the general fund.

History: En. Sec. 11, Ch. 10, Sp. L. July 1992.

15-23-216. Lien — collection actions. (1) A tax due under 15-23-211 through 15-23-216 is a lien on all real and personal property of the railroad car company to the same extent as are other taxes under 15-16-401 and 15-16-402.

(2) The department may at any time after the taxes are delinquent use the following collection actions:

(a) seizure and sale of personal property, as provided in 15-17-911, with the department having the same authority as the county treasurer;

(b) suit for collection in district court; or

(c) issuance of a warrant for distraint, as provided in Title 15, chapter 1, part 7.

(3) The use of one collection method does not prevent the department from using other collection methods.

History: En. Sec. 12, Ch. 10, Sp. L. July 1992.

Part 3
Public Utilities

Part Cross-References

Taxable percentage of public utility property, 15-6-135, 15-6-137, 15-6-141.

Tax on companies regulated by the Public Service Commission to fund Consumer Counsel, 69-1-223.

15-23-301. Officers of certain public utility companies to furnish statement to department. The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating a telegraph, telephone, microwave, electric power, or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other property, other than real estate not included in right-of-way, and which constitute a single and continuous property throughout more than one county or state, must each year furnish the department a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on December 31 immediately preceding as follows:

(1) the whole number of miles of said property in the state and, where the property is partly out of the state, the whole number of miles without the state and the whole number of miles within the state owned or operated by such corporation, person, or association;

(2) the total value of the entire property and plant, both within and without the state, and the total value of that portion of the same within the state;

(3) a complete description of the property within the state, giving the points of entrance into and the points of exit from the state and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state;

(4) such other information regarding such property as may be required by the department.

History: En. Sec. 1, Ch. 49, L. 1919; re-en. Sec. 2138, R.C.M. 1921; re-en. Sec. 2138, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1939; amd. Sec. 25, Ch. 516, L. 1973; amd. Sec. 1, Ch. 50, L. 1974; amd. Sec. 1, Ch. 210, L. 1975; amd. Sec. 12, Ch. 98, L. 1977; R.C.M. 1947, 84-901.

Cross-References

When public utility property assessed, 15-8-406.

Due date of report, 15-23-103.

15-23-302. Repealed. Sec. 11, Ch. 686, L. 1979.

History: En. Sec. 2, Ch. 49, L. 1919; re-en. Sec. 2139, R.C.M. 1921; re-en. Sec. 2139, R.C.M. 1935; amd. Sec. 2, Ch. 17, L. 1939; amd. Sec. 64, Ch. 405, L. 1973; amd. Sec. 2, Ch. 210, L. 1975; R.C.M. 1947, 84-902.

15-23-303. Assessment of property — apportionment to counties. The department must assess all the properties described in 15-23-301, but franchises granted by the United States must not be assessed. The value of such properties for assessment purposes shall be determined upon such factors as the department considers proper.

History: En. Sec. 6, Ch. 49, L. 1919; re-en. Sec. 2143, R.C.M. 1921; re-en. Sec. 2143, R.C.M. 1935; amd. Sec. 4, Ch. 17, L. 1939; amd. Sec. 27, Ch. 516, L. 1973; amd. Sec. 13, Ch. 98, L. 1977; R.C.M. 1947, 84-905.

Part 4

Airlines

15-23-401. Definitions. The following words and phrases when used in this part, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(1) "Air commerce" means the transportation by aircraft of persons or property for hire in interstate, intrastate, or international transportation on regularly scheduled flights.

(2) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(3) "Equated plane hours" means hours spent by aircraft in flight or on the ground weighted according to the cargo capacity of each aircraft.

(4) "Flight property" means aircraft fully equipped, ready for flight used in air commerce.

(5) "Operating" or "operated" means landings or takeoffs during interstate flight.

(6) "Scheduled airline company" means any person who undertakes directly or indirectly to engage in the business of scheduled air commerce.

History: En. Sec. 1, Ch. 249, L. 1955; amd. Sec. 1, Ch. 367, L. 1969; amd. Sec. 22, Ch. 52, L. 1977; R.C.M. 1947, 84-6401.

15-23-402. Report by airline company. Every airline company engaged in air commerce in this state shall annually file with the department of revenue in such form as the department may require a report under oath showing the following:

(1) the name of the person or persons, association, joint-stock company, or corporation;

(2) under the laws of what state organized or existing;

(3) the location of its principal office;

(4) the location of its principal office in this state, if any;

(5) the number of aircraft of each type or kind, the total original cost, the average cost per plane, the total depreciated cost, and the average depreciated cost per plane at the end of the preceding calendar year;

(6) the number of shares of capital stock authorized, number of shares outstanding, the total par value and the total market value at the end of the preceding calendar year; the par value of outstanding bonds and long-term debt and the market value at the end of the preceding calendar year;

(7) income account showing operating revenues and expenses of the entire system and net operating income during the preceding calendar year;

(8) the total tonnage of passengers, express, and freight first received by the airline company in this state during the preceding calendar year plus the total tonnage of passengers, express, and freight finally discharged by it

within this state during the preceding calendar year and the total of such tonnage first received by the airline company or finally discharged by it within and without this state during the preceding calendar year;

(9) the total time in equated plane hours of all aircraft of the scheduled airline company in flight in this state during the preceding calendar year plus the total time of such aircraft on the ground in this state during the preceding calendar year and the total of such time in flight or on the ground within and without this state during the preceding calendar year;

(10) the number of revenue ton-miles of passengers, mail, express, and freight flown by the scheduled airline company within this state during the preceding calendar year and the total number of such miles flown by it within and without this state during the preceding calendar year;

(11) the number of arrivals and departures of all aircraft of the scheduled airline company in this state during the preceding calendar year and the total number of such arrivals and departures within and without this state during the preceding calendar year;

(12) such other information as the department may require.

History: En. Sec. 3, Ch. 249, L. 1955; amd. Sec. 243, Ch. 516, L. 1973; amd. Sec. 21, Ch. 98, L. 1977; R.C.M. 1947, 84-6403.

Cross-References

Due date of report, 15-23-103.

15-23-403. Determination of value — exception for new aircraft and supporting equipment — notice. (1) The department of revenue shall determine the full and true valuation of all property of all airlines operating in this state or used by every scheduled airline company in air commerce. Except as provided in subsection (2), this valuation may be ascertained by:

(a) determining the full and true valuation of all property owned and operated by every scheduled airline company; and

(b) allocating to the state of Montana from this total valuation a valuation which represents this state's proper share of the valuation of the property, through the application of ratios which are indicated in subsections (8), (9), (10), and (11) of 15-23-402 against the total valuation.

(2) For a scheduled airline company operating within this state whose allocation of valuation within this state, as determined under subsection (1)(b), is 50% or more, the department shall determine the valuation of a new aircraft acquired and new equipment acquired to support that aircraft at 28% of full and true valuation for the first year after acquisition. For each succeeding year, the department shall increase the valuation by 8% over the previous year's valuation until the valuation equals full and true valuation.

(3) After making the assessment as provided in subsection (1) or (2), the department shall give written notice thereof to the person or persons to whom the assessment is made.

History: En. Sec. 4, Ch. 249, L. 1955; amd. Sec. 2, Ch. 367, L. 1969; amd. Sec. 244, Ch. 516, L. 1973; amd. Sec. 2, Ch. 328, L. 1975; R.C.M. 1947, 84-6404; amd. Sec. 7, Ch. 686, L. 1979; amd. Sec. 1, Ch. 520, L. 1987.

Cross-References

Department to apportion value among counties, 15-23-105.

Value to be transmitted to counties, 15-23-106.

Part 5
Mines Net Proceeds

Part Cross-References

Classification and taxable percentage of mines net proceeds, 15-6-131.

Mining license taxes, Title 15, ch. 37.

15-23-501. Taxation of mines. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed as all other land is taxed. All machinery used in mining and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims and the annual net proceeds of all mines and mining claims shall be taxed as other personal property.

History: En. Sec. 3, p. 73, L. 1891; re-en. Sec. 3672, Pol. C. 1895; re-en. Sec. 2500, Rev. C. 1907; re-en. Sec. 2088, R.C.M. 1921; re-en. Sec. 2088, R.C.M. 1935; R.C.M. 1947, 84-5401; amd. Sec. 18, Ch. 693, L. 1979.

Cross-References

Mines as real estate, 15-1-101.

15-23-502. *(Temporary)* **Net proceeds tax — statement of yield.** Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal, travertine, building stone, and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by the person during the year preceding January 1 of the year in which the statement is made. The statement must be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Except as provided in 15-23-515, 15-23-516, and 15-23-517, the statement must show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of the mine or the proceeds derived from the sale of products, and the amount or amounts paid or yielded as royalty to each of the persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the ores, mineral products, or deposits and the yield of the ores, mineral products, or deposits from the mine in constituents of commercial value; that is, commercially valuable constituents of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of the product into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which the return is made;

(12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;

(13) cost of welfare and retirement fund payments provided for in wage contracts;

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any services beyond the stage of reduction and beneficiation of the minerals; and

(15) cost of mine reclamation. *(Terminates December 31, 1993—sec. 4, Ch. 700, L. 1991.)*

15-23-502. *(Effective January 1, 1994)* **Net proceeds tax — statement of yield.** Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by the person during the year preceding January 1 of the year in which the statement is made. The statement must be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Except as provided in 15-23-515, 15-23-516, and 15-23-517, the statement must show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of the mine or the proceeds derived from the sale of products, and the amount or amounts paid or yielded as royalty to each of the persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the ores, mineral products, or deposits and the yield of the ores, mineral products, or deposits from the mine in constituents of commercial value; that is, commercially valuable constituents of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of the product into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which the return is made;

(12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;

(13) cost of welfare and retirement fund payments provided for in wage contracts;

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any services beyond the stage of reduction and beneficiation of the minerals; and

(15) cost of mine reclamation.

History: En. Sec. 1, Ch. 237, L. 1921; re-en. Sec. 2089, R.C.M. 1921; amd. Sec. 1, Ch. 191, L. 1925; amd. Sec. 1, Ch. 139, L. 1927; amd. Sec. 1, Ch. 161, L. 1933; amd. Sec. 1, Ch. 188, L. 1935; re-en. Sec. 2089, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1947; amd. Sec. 1, Ch. 138, L. 1969; amd. Sec. 195, Ch. 516, L. 1973; amd. Sec. 16, Ch. 525, L. 1975; amd. Sec. 18, Ch. 52, L. 1977; amd. Sec. 14, Ch. 98, L. 1977; amd. Sec. 4, Ch. 498, L. 1977; R.C.M. 1947, 84-5402; amd. Sec. 1, Ch. 528, L. 1983; amd. Sec. 1, Ch. 623, L. 1985; amd. Sec. 8, Ch. 531, L. 1989; amd. Sec. 8, Ch. 695, L. 1991; amd. Sec. 2, Ch. 700, L. 1991; amd. Sec. 8, Ch. 506, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 506, in third sentence of introductory clause inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

Cross-References

Due date of report, 15-23-103.

15-23-503. Net proceeds — how computed. (1) The department of revenue shall calculate from the returns the gross product yielded from a mine and its gross value for the year covered by the statement and shall calculate and compute the net proceeds of the mine yielded to the person engaged in mining. Except as provided in 15-23-515, 15-23-516, and 15-23-517, net proceeds must be determined by subtracting from the value of the gross product of the mine the following:

(a) all royalty paid or apportioned in cash or in kind by the person engaged in mining;

(b) all money expended for necessary labor, machinery, and supplies needed and used in the mining operations and developments;

(c) all money expended for improvements, repairs, and betterments necessary in and about the working of the mine, except as provided in this section;

(d) all money expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine;

(e) depreciation in the sum of 6% of the assessed valuation of the milling and reduction works for the calendar year for which the return is made;

(f) all money actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale and for extracting the metals and minerals and for marketing the product and the conversion of the product into money;

(g) all money expended for insurance and welfare and retirement costs reported in the statement required in 15-23-502;

(h) all money expended for necessary labor, equipment, and supplies for testing minerals extracted to satisfy federal or state health and safety laws or regulations, for plant security in Montana, for assaying and sampling the extracted minerals, for the cost of reclamation at the site of the mine, and for engineering and geological services conducted in Montana for existing mining operations but not including services beyond the stage of reduction and beneficiation of the minerals.

(2) In computing the deductions allowable for repairs, improvements, and betterments to the mine, the department shall allow 10% of the cost each year for a period of 10 years.

(3) Money invested in mines or improvements may not be allowed as a deduction unless all machinery, equipment, and buildings represented by the money are returned to the county in which the mine is located for assessment purposes at the level of assessment of all other property in the county.

(4) Money invested in the mines and improvements during any year except the year for which the statement is made and except as provided in this section may not be included in the expenditures, and the expenditures may not include the salary or any portion of the salary of any person or officer not actually engaged in the working of the mine or superintending the management of the mine.

History: En. Sec. 2, Ch. 237, L. 1921; re-en. Sec. 2090, R.C.M. 1921; amd. Sec. 2, Ch. 191, L. 1925; amd. Sec. 2, Ch. 139, L. 1927; amd. Sec. 2, Ch. 161, L. 1933; amd. Sec. 2, Ch. 188, L. 1935; re-en. Sec. 2090, R.C.M. 1935; amd. Sec. 1, Ch. 57, L. 1951; amd. Sec. 1, Ch. 257, L. 1959; amd. Sec. 109, Ch. 405, L. 1973; amd. Sec. 15, Ch. 98, L. 1977; R.C.M. 1947, 84-5403; amd. Sec. 2, Ch. 528, L. 1983; amd. Sec. 2, Ch. 623, L. 1985; amd. Sec. 9, Ch. 531, L. 1989; amd. Sec. 9, Ch. 695, L. 1991; amd. Sec. 9, Ch. 506, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 506 in second sentence inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

Cross-References

Classification and tax rate for net proceeds of mines, 15-6-131.

Assessment, 15-8-111.

Transmission of value to counties, 15-23-106.

15-23-504. Lien of tax and penalty. The tax and penalty so assessed on net proceeds are a lien upon all of the right, title, and interest of such operator in or to such mine or mining claim and upon all of the right, title, and interest in or to the machinery, buildings, tools, and equipment used in operating the mine or mining claim. The tax and penalty on such net proceeds may be collected and the payment enforced by the seizure and sale of the personal property upon which the tax and penalty are a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction. Resort to any one of the methods of enforcing collection shall not bar the right to resort to either or both of the other methods, but any two or all of the methods may be used until the full amount of such tax and penalty is collected.

History: En. Sec. 4, Ch. 161, L. 1933; re-en. Sec. 2090.2, R.C.M. 1935; amd. Sec. 2, Ch. 138, L. 1969; amd. Sec. 16, Ch. 98, L. 1977; R.C.M. 1947, 84-5405.

Cross-References

Sale of personal property for delinquent taxes, 15-16-113.

Collection of delinquent taxes by suit, Title 15, ch. 16, part 5.

Sale of real property for delinquent taxes, Title 15, ch. 17.

Lien of mines net proceeds tax, 15-23-504.

15-23-505. Assessment of royalties. Upon receipt of the list or schedule setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to the royalty owners or claimants during the year for which the return is made, the department of revenue shall proceed to assess and tax the royalties on the same basis as net proceeds of mines are taxed as provided by 15-6-131.

History: En. Sec. 3, Ch. 188, L. 1935; re-en. Sec. 2090.3, R.C.M. 1935; amd. Sec. 196, Ch. 516, L. 1973; amd. Sec. 64, Ch. 566, L. 1977; R.C.M. 1947, 84-5406; amd. Sec. 19, Ch. 693, L. 1979.

Cross-References

Transmission of value to counties, 15-23-106.

15-23-506. False or fraudulent reports. If any report required by this part contains any willfully false or fraudulent statements as to the gross amount received by any person engaged in mining for any mine's product, then the department shall compute the gross value of such mine's product based upon the average quotations of the price of such mine's product in New York City or the relative market value at the point of delivery as evidenced by some established authority or market report. If any such person has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the department shall compute the gross value of such portion of the mine's product so sold or disposed of substantially below the market price, which gross value shall be based upon the quotations of the price of such mine's product in New York City or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report.

Should there be no quotation covering any particular product, then the department shall fix the value of such gross product or such portion thereof as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 4, Ch. 188, L. 1935; re-en. Sec. 2090.4, R.C.M. 1935; amd. Sec. 197, Ch. 516, L. 1973; amd. Sec. 17, Ch. 98, L. 1977; R.C.M. 1947, 84-5407.

Cross-References

Failure to file report, 15-23-104.

15-23-507. Taxation and payment on royalty interests. At the time of transmitting net proceeds assessments, the department of revenue shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located. Thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before September 15 following, as specified in this section. Said taxes shall be due and payable. Assessments of royalty on production of metals and minerals other than petroleum and natural gas shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner and to collect the taxes thereon in the same manner as taxes on net proceeds of mines. Taxes on such royalty assessments and taxes on net proceeds of mines shall be payable at the times specified in 15-16-102, and any delinquencies in the payment of same shall be subject to the interest and penalties provided in 15-16-102.

History: En. Sec. 6, Ch. 188, L. 1935; re-en. Sec. 2091.1, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1939; amd. Sec. 2, Ch. 257, L. 1959; amd. Sec. 199, Ch. 516, L. 1973; amd. Sec. 1, Ch. 398, L. 1975; R.C.M. 1947, 84-5409.

15-23-508. Lien of tax — enforcement of payment. (1) The taxes on such net proceeds must be levied as the levy of other taxes is provided for, and every such tax is a lien upon the mine or mining claim from which the ore or mineral products or deposits are mined or extracted and is a prior lien upon all personal property and improvements used in the process of extracting such ore or mineral products or deposits, provided such personal or real property is owned by or under lease by the person who extracted said ore, mineral products, or deposits.

(2) The tax on such net proceeds may be collected and the payment thereof enforced by the seizure and sale of the personal property upon which the tax is a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine or mining claim and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to any one of the methods of enforcing collection as herein provided for shall not bar the right to resort to either or both of the other methods, but any two or all of the methods herein provided for may be used until the full amount of such tax is collected.

History: En. Sec. 7, Ch. 237, L. 1921; re-en. Sec. 2095, R.C.M. 1921; amd. Sec. 1, Ch. 143, L. 1925; re-en. Sec. 2095, R.C.M. 1935; amd. Sec. 20, Ch. 52, L. 1977; R.C.M. 1947, 84-5413.

Cross-References

Sale of personal property for delinquent taxes, 15-16-113.

Collection of delinquent taxes by suit, Title 15, ch. 16, part 5.

Sale of real property for delinquent taxes, Title 15, ch. 17.

Lien of mines net proceeds tax, 15-23-504.

15-23-509. Repealed. Sec. 35, Ch. 581, L. 1979.

History: En. Sec. 5, Ch. 237, L. 1921; re-en. Sec. 2093, R.C.M. 1921; re-en. Sec. 2093, R.C.M. 1935; R.C.M. 1947, 84-5411.

15-23-510 through 15-23-514 reserved.

15-23-515. Net proceeds for talc — statement — value. (1) A statement of gross yield and value, required in 15-23-502, that is filed by a producer of talc must contain the following:

(a) the name and address of the owner or lessee or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds derived from the sale of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) the number of tons of talc extracted, produced, and treated or sold from the mine during the period covered by the statement;

(d) the amount and character of the talc and the yield of the talc from the mine, measured in tons, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For the purposes of this section, the gross yield or value of talc is determined by multiplying the number of tons of talc reported under subsection (1)(c) by:

(i) for the taxable year beginning January 1, 1989, $4.25; and

(ii) for the taxable years beginning January 1, 1990, and thereafter, the product obtained by multiplying $4.25 by the quotient of the PCE for the first quarter of the year previous to the taxable year for which the net proceed value is being calculated, divided by the PCE for the first quarter of the 1989 taxable year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

History: En. Sec. 1, Ch. 531, L. 1989; amd. Sec. 10, Ch. 695, L. 1991.

15-23-516. Net proceeds for vermiculite — statement — value. (1) A statement of gross yield and value, required in 15-23-502, that is filed by a producer of vermiculite must contain the following:

(a) the name and address of the owner, lessee, or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds derived from the sale of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) the number of tons of vermiculite extracted, produced, and treated or sold from the mine during the period covered by the statement;

(d) the amount and character of the vermiculite and the yield of the vermiculite from the mine, measured in tons, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For the purposes of this section, the gross yield or value of vermiculite is determined by multiplying the number of tons of vermiculite reported under subsection (1)(c) by:

(i) for the taxable year beginning January 1, 1991, $27; and

(ii) for the taxable years beginning January 1, 1992, and thereafter, the product obtained by multiplying $27 by the quotient of the PCE for the first quarter of the year previous to the taxable year for which the net proceed value is being calculated, divided by the PCE for the first quarter of the 1991 taxable year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

History: En. Sec. 1, Ch. 695, L. 1991.

15-23-517. Net proceeds for limestone — statement — value. (1) A statement of gross yield and value, required in 15-23-502, that is filed by a producer of limestone extracted for the production of quicklime must contain the following:

(a) the name and address of the owner, lessee, or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds derived from the sale of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) the number of tons of limestone extracted and sold either as limestone or quicklime from the mine during the period covered by the statement;

(d) the amount and character of the limestone and the yield of the limestone from the mine, measured in tons, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For purposes of this section, the gross yield or value of limestone is determined by multiplying the number of tons of limestone reported under subsection (1)(c) by:

(i) for the tax year beginning January 1, 1993, 34 cents; and

(ii) for the taxable years beginning January 1, 1994, and thereafter, the product obtained by multiplying 34 cents by the quotient of the PCE for the first quarter of the year previous to the taxable year for which the net proceeds value is being calculated, divided by the PCE for the first quarter of the 1992 taxable year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

History: En. Sec. 1, Ch. 506, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

15-23-518 through 15-23-520 reserved.

15-23-521. Examination of records by department. The department of revenue may at any time examine the records of any person specified in this part as the records may pertain to the yield of ore or mineral products or deposit in order to verify the statements made by the person. If from the examination or from other information, the department finds any statement or any material part of a statement willfully false or fraudulent, the department must assess in the same manner as provided for in 15-23-503, 15-23-515, 15-23-516, or 15-23-517.

History: En. Sec. 6, Ch. 237, L. 1921; re-en. Sec. 2094, R.C.M. 1921; re-en. Sec. 2094, R.C.M. 1935; amd. Sec. 201, Ch. 516, L. 1973; R.C.M. 1947, 84-5412; amd. Sec. 10, Ch. 531, L. 1989; amd. Sec. 11, Ch. 695, L. 1991; amd. Sec. 10, Ch. 506, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 506 at end inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

15-23-522. Surface ground and improvements not exempt. Nothing in this part must be construed so as to exempt from taxation the surface ground, improvements, buildings, erections, structures, or machinery placed upon any mine or mining claim or used in connection therewith or supplies used either in mills, reduction works, or mines.

History: En. Sec. 8, Ch. 237, L. 1921; re-en. Sec. 2096, R.C.M. 1921; re-en. Sec. 2096, R.C.M. 1935; R.C.M. 1947, 84-5414.

15-23-523. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports, and returns required by law to be made with reference to the net proceeds of mines and pay the tax due for such period as it transacted business on or before the date of such dissolution or cessation of business. The department of revenue may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 1, Ch. 10, L. 1941; amd. Sec. 202, Ch. 516, L. 1973; R.C.M. 1947, 84-5415.

Part 6

Oil and Gas Net Proceeds

Part Cross-References

Payment of new production taxes, 15-16-121.

Oil and gas severance tax, Title 15, ch. 36.

Privilege and license tax on oil and gas producers, 82-11-131.

15-23-601. Definitions. As used in this part, the following definitions apply:

(1) "Excise tax" means the windfall profit tax on domestic crude oil imposed by Title I of the federal Crude Oil Windfall Profit Tax Act of 1980, as enacted or as amended.

(2) The term "new production" means the production of natural gas, petroleum, or other crude or mineral oil from any well drilled after June 30, 1985, or that has not produced natural gas, petroleum, or other crude or mineral oil during the 5 years immediately preceding the first month of qualified new production.

(3) The terms "operator" and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

(4) The term "well" includes each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer.

History: En. Sec. 1, Ch. 135, L. 1955; amd. Sec. 21, Ch. 52, L. 1977; amd. Sec. 18, Ch. 98, L. 1977; R.C.M. 1947, 84-6201; amd. Sec. 1, Ch. 525, L. 1981; amd. Sec. 1, Ch. 695, L. 1985; amd. Sec. 10, Ch. 655, L. 1987; amd. Sec. 1, Ch. 267, L. 1991.

15-23-602. Statement of sales proceeds on new production. (1) As provided in subsection (2), each operator or producer of new production of natural gas, petroleum, or other crude or mineral oil shall make out and deliver to the department of revenue a statement of the gross sales proceeds of new production of natural gas, petroleum, or other crude or mineral oil from each well owned or worked by the person. The gross sales proceeds must be determined by multiplying the units of production sold from the well times the royalty unit value of that production at the well. The statement must be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership. The statement must show the following:

(a) the name and address of the operator, together with a list in duplicate of the names and addresses of any persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale of the production, and the amount paid or yielded as royalty to each of those persons during the period covered by the statement;

(b) the description and location of the well;

(c) the number of cubic feet of natural gas, barrels of petroleum or other crude or mineral oil sold from the well during the period covered by the statement; and

(d) the gross sales proceeds in dollars and cents or, in the case of sales between parties not acting at arm's length, the greater of the gross sales proceeds from or the fair market value of the products sold.

(2) Each operator having new production as defined in 15-23-601 shall, on or before the last day of the months of October, January, April, and July, make out and deliver to the department of revenue a statement of the gross sales proceeds of the new production from each well owned or worked by the person during the preceding calendar quarter. The statement must be in the form prescribed by the department and verified as provided in subsection (1). The statement must show the information required in subsections (1)(a) through (1)(d).

History: **En. Sec. 2, Ch. 135, L. 1955; amd. Sec. 1, Ch. 159, L. 1969; amd. Sec. 117, Ch. 405, L. 1973; amd. Sec. 19, Ch. 98, L. 1977; R.C.M. 1947, 84-6202; amd. Sec. 1, Ch. 425, L. 1981; amd. Sec. 2, Ch. 525, L. 1981; amd. Sec. 3, Ch. 606, L. 1983; amd. Sec. 2, Ch. 695, L. 1985; amd. Sec. 11, Ch. 655, L. 1987; amd. Sec. 73, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 267, L. 1991.**

Cross-References

Due date of return, 15-23-103.

15-23-603. Net proceeds — how computed. (1) As provided in subsection (2), the department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from the well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds are determined by subtracting from the gross sales proceeds of the well all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid.

(2) For new production, net proceeds are the equivalent of the gross sales proceeds, without deduction for excise taxes, of the product yielded from the well for the quarter covered by the statement, except that in computing the total number of barrels of petroleum and other mineral or crude oil or cubic feet of natural gas produced, there must be deducted so much of the product as is used in the operation of the well from which the petroleum or other mineral or crude oil or natural gas is produced for pumping the petroleum or other mineral or crude oil or natural gas from the well to a tank or pipeline.

(3) In the statement of sales proceeds required under 15-23-602 for lease or unitized areas from which new production and other production have been sold, the number of barrels of new production of oil or cubic feet of new production of gas must be segregated from and stated separately from the number of barrels of other production of oil or cubic feet of other production of gas.

History: **En. Sec. 3, Ch. 135, L. 1955; amd. Sec. 230, Ch. 516, L. 1973; amd. Sec. 20, Ch. 98, L. 1977; R.C.M. 1947, 84-6203; amd. Sec. 2, Ch. 425, L. 1981; amd. Sec. 3, Ch. 525, L. 1981; amd. Sec. 3, Ch. 383, L. 1983; amd. Sec. 1, Ch. 642, L. 1985; amd. Sec. 3, Ch. 695, L. 1985; amd. Sec. 2, Ch. 724, L. 1985; amd. Sec. 12, Ch. 655, L. 1987; amd. Sec. 74, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 267, L. 1991; amd. Sec. 8, Ch. 597, L. 1991.**

Cross-References

Transmission of value to counties, 15-23-106.

15-23-604. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: **En. Sec. 4, Ch. 135, L. 1955; amd. Sec. 231, Ch. 516, L. 1973; amd. Sec. 5, Ch. 256, L. 1977; R.C.M. 1947, 84-6204(part); amd. Sec. 2, Ch. 642, L. 1985; amd. Sec. 13, Ch. 655, L. 1987.**

15-23-605. Assessment of royalties. The amount of royalty received in cash paid by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid must be considered net proceeds to the recipient and must be assessed as follows: upon receipt of the lists or schedules setting forth the names and addresses of any persons owning or claiming royalty and the amount paid or yielded as royalty to the royalty owners or claimants during the year for which the return is made, the department of revenue shall proceed to assess and tax the same as net proceeds of mines.

History: En. Sec. 5, Ch. 135, L. 1955; amd. Sec. 232, Ch. 516, L. 1973; amd. Sec. 68, Ch. 566, L. 1977; R.C.M. 1947, 84-6205; amd. Sec. 3, Ch. 425, L. 1981; amd. Sec. 4, Ch. 525, L. 1981; amd. Sec. 4, Ch. 383, L. 1983; amd. Sec. 4, Ch. 695, L. 1985; amd. Sec. 14, Ch. 655, L. 1987; amd. Sec. 11, Ch. 83, L. 1989; amd. Sec. 75, Ch. 11, Sp. L. June 1989.

Cross-References

Transmission of value to county, 15-23-106.

15-23-606. False or fraudulent reports — procedure in case of. If any report required by this part contains any willfully false or fraudulent statement as to the gross amount received by any person engaged in mining as aforesaid for any mine's product, then the department of revenue shall compute the gross value of such mine's product, and such gross value shall be based upon the market value at the point of production. Should there be no quotation covering any particular product, then the department shall fix the value of such gross product in such manner as may seem to be equitable.

History: En. Sec. 6, Ch. 135, L. 1955; amd. Sec. 233, Ch. 516, L. 1973; R.C.M. 1947, 84-6206.

15-23-607. County assessors to compute taxes. (1) Immediately after the board of county commissioners has fixed tax levies on the second Monday in August, the county assessor shall, subject to the provisions of 15-23-612, compute the taxes on net proceeds, as provided in subsection (2) of this section, and royalty assessments and shall deliver the book to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice of the assessments to the operator and shall collect the taxes as provided by law.

(2) For new production, as defined in 15-23-601, the county assessor may not levy or assess any mills against the value of the new production, but shall instead levy a tax as follows:

(a) for new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603(2); or

(b) for new production of natural gas, 12% of net proceeds, as described in 15-23-603(2).

(3) The amount of tax levied in subsections (2)(a) and (2)(b), divided by the appropriate tax rate and multiplied by 60%, must be treated as taxable value for county bonding purposes.

(4) The operator or producer is liable for the payment of the taxes that, except as provided in 15-16-121, are payable by and must be collected from the operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines. However, the operator may at his option withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon the royalty or royalty interest. After the withholding, any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests.

History: En. Sec. 8, Ch. 135, L. 1955; amd. Sec. 1, Ch. 80, L. 1963; amd. Sec. 235, Ch. 516, L. 1973; amd. Sec. 6, Ch. 256, L. 1977; R.C.M. 1947, 84-6208; amd. Sec. 5, Ch. 695, L. 1985; amd. Sec. 15, Ch. 655, L. 1987; amd. Sec. 76, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 267, L. 1991; amd. Sec. 2, Ch. 711, L. 1991; amd. Sec. 4, Ch. 790, L. 1991.

Cross-References

Calculation of taxable value for purposes of classifying counties, 7-1-2111.

Limitation on amount of county indebtedness, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327.

Payment of new production taxes, 15-16-121.

Inclusion of new production taxes in calculation of school levies, 20-9-141, 20-9-331, 20-9-333, 20-9-501, and 20-10-144.

15-23-608. Lien of tax and penalty — enforcement of payment. (1) The taxes and/or penalties on such net proceeds must be levied as the levy of other taxes is provided for. Every such tax and/or penalty is a lien upon the mine from which the natural gas, petroleum, or crude or mineral oil is mined or extracted and is a prior lien upon all personal property and improvements used in the process of extracting such natural gas, petroleum, or crude or mineral oil; provided, however, that such personal or real property is owned by or under lease by the person who extracted said natural gas, petroleum, or other crude or mineral oil.

(2) The tax and/or penalty on such net proceeds may be collected and the payment thereof enforced by the seizure and sale of the personal property upon which the tax and/or penalty is a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine and improvements as provided for the sale of real property for delinquent taxes or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods but that any two or all of the methods herein provided for may be used until the full amount of such tax and/or penalty is collected.

History: En. Sec. 13, Ch. 135, L. 1955; amd. Sec. 2, Ch. 159, L. 1969; R.C.M. 1947, 84-6213.

Cross-References

Sale of personal property for delinquent taxes, 15-16-113.

Collection of delinquent taxes by suit, Title 15, ch. 16, part 5.

Sale of real property for delinquent taxes, 15-23-504.

15-23-609. Statement required on dissolution of corporation during taxpaying year. Every person who shall cease to do business in this state during any taxpaying year shall make all statements, reports, and returns required by this part and pay the tax due for such period as it transacted business, on or before the date of such cessation of business. The department of revenue may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 11, Ch. 135, L. 1955; amd. Sec. 237, Ch. 516, L. 1973; R.C.M. 1947, 84-6211.

15-23-610. Examination of records by department. The department of revenue shall have the right and power at any time to examine all books, records, papers, and documents of such person pertaining to such business in order to verify the statements made by such person, and if, from such examination or from other information, said department finds any statement or any material part thereof willfully false or fraudulent, said department must assess in the same manner as provided for in 15-23-603.

History: En. Sec. 12, Ch. 135, L. 1955; amd. Sec. 238, Ch. 516, L. 1973; R.C.M. 1947, 84-6212.

15-23-611. Surface ground and improvements not exempt. Nothing in this part must be construed so as to exempt from taxation the surface ground, improvements, buildings, erections, structures, or machinery placed upon any mine or supplies used in connection therewith.

History: En. Sec. 14, Ch. 135, L. 1955; R.C.M. 1947, 84-6214.

Cross-References

Down-hole equipment in oil and gas wells exempt from taxation, 15-6-213.

15-23-612. Certain natural gas, petroleum, or other crude or mineral oil exempt. (1) New production, as defined in 15-23-601, is exempt from the net proceeds tax imposed by this part for the first 12 months following the last day of the calendar month immediately preceding the month in which:

(a) natural gas is placed into a natural gas distribution system; or

(b) production for sale from a crude oil or mineral oil well is pumped or flows.

(2) After the expiration of the 12-month exemption period provided in subsection (1), new production of natural gas, petroleum, or other crude or mineral oil is subject to net proceeds tax imposed by this part.

(3) Notwithstanding the provisions of subsections (1) and (2), all reporting requirements under the net proceeds tax remain in effect.

History: En. 84-2213 by Sec. 2, Ch. 256, L. 1977; R.C.M. 1947, 84-2213(part); amd. Sec. 16, Ch. 655, L. 1987.

15-23-613. Disposition of new production taxes. The county treasurer shall credit all taxes on new production, as provided for in 15-23-607, in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as property taxes were distributed in the year preceding the budget year.

History: En. Sec. 11, Ch. 695, L. 1985; amd. Sec. 17, Ch. 655, L. 1987; amd. Sec. 5, Ch. 267, L. 1991.

15-23-614 reserved.

15-23-615. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 1, Ch. 383, L. 1983.

15-23-616. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 2, Ch. 383, L. 1983; amd. Sec. 43, Ch. 370, L. 1987.

15-23-617 through 15-23-620 reserved.

15-23-621. Allocation of new production. (1) If a lease has production that does not qualify for new production and has new production, the allocation of the new production must be based on the average daily production per well. The average daily production per well must be determined by dividing the total production for the quarter by the number of well production days for the quarter.

(2) Except as provided in subsection (4), the number of well production days for the quarter is the sum of the number of completed wells on the first day of the quarter times the number of days in the quarter plus the number

of days from the date of completion of any wells during the quarter to the end of the quarter. New production for the quarter must then be calculated by multiplying the average daily production per well times the number of wells producing new production times the number of production days attributed to those wells for the quarter. The value of the production must be based on the average price received for the production for the quarter.

(3) Average daily production, well production days, and average price must be calculated each quarter.

(4) Subsections (1) through (3) do not apply to a well producing new production from a lease that has production that does not qualify for new production if the actual new production from the well can be determined in a verifiable manner.

History: En. Sec. 18, Ch. 655, L. 1987; amd. Sec. 6, Ch. 267, L. 1991.

15-23-622 through 15-23-630 reserved.

15-23-631. Tribal royalties exempt. Royalties received by an Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a-396g (1983)) are exempt from taxation.

History: En. Sec. 1, Ch. 536, L. 1989.

Cross-References

Oil and gas severance tax — tribal royalties exempt, 15-36-120.

Resource indemnity trust tax — tribal royalties exempt, 15-38-121.

Part 7

Coal Gross Proceeds

Part Cross-References

Classification and taxable percentage of coal gross proceeds, 15-6-132.

Coal severance tax, Title 15, ch. 35.

15-23-701. Reporting gross yield from coal. (1) Each person engaged in mining coal must, on or before March 31 each year, file with the department of revenue a statement of the gross yield from each coal mine owned or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department, which may be coordinated with the form used under 15-35-104 and must be verified by an officer of the firm. The statement shall include:

(a) the name and address of the owner or lessee or operator of the mine;

(b) the location of the mine;

(c) the tons of coal extracted, treated, and sold from the mine during the taxable period;

(d) the gross yield or value in dollars and cents derived from the contract sales price as defined in 15-35-102.

(2) Whenever value is imputed under 15-35-107(1)(b), that value shall be used for purposes of reporting the value of the gross yield of coal under this section.

History: En. 84-1320 by Sec. 9, Ch. 525, L. 1975; amd. Sec. 3, Ch. 156, L. 1977; R.C.M. 1947, 84-1320; (2)En. Sec. 2, Ch. 326, L. 1983; amd. Sec. 44, Ch. 370, L. 1987.

Cross-References

Due date of report, 15-23-103.

Transmission of value to counties, 15-23-106.

15-23-702. Transmission of gross proceeds to county assessor. On or before July 1 each year, the department shall transmit to the county assessor of each county in which coal mines are situated the valuation of the gross proceeds of such mines for the purpose of taxation, as the same have been determined by the department. The county assessor shall immediately enter the same upon a suitable assessment roll, the form of which shall be prescribed by the department.

History: En. 84-1321 by Sec. 10, Ch. 525, L. 1975; R.C.M. 1947, 84-1321.

15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools. (1) The county assessor shall compute from the reported gross proceeds from coal a tax roll that he shall transmit to the county treasurer on or before September 15 each year. The county assessor may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101.

(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102(5).

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenues, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

History: En. 84-1322 by Sec. 11, Ch. 525, L. 1975; R.C.M. 1947, 84-1322; amd. Sec. 77, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 610, L. 1991; amd. Sec. 2, Ch. 641, L. 1991; amd. Sec. 3, Ch. 711, L. 1991; amd. Sec. 5, Ch. 790, L. 1991.

15-23-704. Lien of tax — enforcement of payment. The tax on gross proceeds from coal shall be levied as taxes on other forms of property, and this tax and the severance tax on coal production are each a lien upon the coal mine and a prior lien upon all personal property and improvements used to produce the coal. These taxes may be collected by the seizure and sale of the personal property on which the tax is a lien as provided under 15-16-113 and 15-17-911.

History: En. 84-1323 by Sec. 12, Ch. 525, L. 1975; R.C.M. 1947, 84-1323; amd. Sec. 50, Ch. 587, L. 1987.

Cross-References

Lien for payment of coal severance tax, 15-35-105.

15-23-705. Department to calculate unit value. (1) Except as provided in subsection (2), for the purposes of the distribution of coal gross proceeds taxes collected under this part, the department shall determine the unit value of coal for each mine in each taxing unit. The unit value for coal for each mine in each taxing unit is the quotient obtained by dividing the gross proceeds taxes calculated on coal produced in that taxing unit in calendar year 1988 by the number of tons of coal extracted, treated, and sold in that taxing unit during 1988.

(2) The unit value calculation does not apply to coal mines that began production after December 31, 1988.

History: **En. Sec. 1, Ch. 641, L. 1991.**

15-23-706. Department to determine redistribution of coal gross proceeds to taxing jurisdictions. (1) The coal gross proceeds redistribution account established in 15-23-707 is statutorily appropriated, as provided in 17-7-502, for allocation to the county for redistribution as provided in subsections (2) and (3).

(2) Each year the department shall determine the amount of tax collected under this part from within each taxing unit in the county. If the amount collected by each county is less than the amount determined under 15-23-703(4) for that county, the department shall, on or before June 30 of each year, send the amount of the difference from the state special revenue account established in 15-23-707 to the county treasurer for redistribution as provided in 15-23-703(5).

(3) If the amount received by the department for redistribution is less than or more than the redistribution amount determined in subsection (2), the department shall calculate and redistribute the shortage or excess amount in the following manner:

(a) If a county does not receive the entire amount to which it is entitled under subsection (2), the shortage amounts of each taxing unit must be divided by the total shortage amounts of all taxing units determined under 15-23-703(4) to obtain a shortage percentage for each taxing unit. The shortage percentage for each taxing unit must be multiplied by the amount that is available for redistribution to each taxing unit, and this amount must be redistributed to each respective taxing unit.

(b) If there are excess amounts after the redistribution provided for in subsection (2), the excess amounts must be redistributed to the county of origin in proportion to the amount each taxing unit in the county contributed for redistribution.

(4) The county treasurer shall distribute the money received under subsection (3)(b) as provided in 15-23-703(5).

History: **En. Sec. 3, Ch. 641, L. 1991.**

15-23-707. Coal gross proceeds redistribution account. (1) There is within the state special revenue fund a coal gross proceeds redistribution account.

(2) All money received from county treasurers as provided in 15-23-703(6)(a) must be deposited by the department into the coal gross proceeds redistribution account for redistribution as provided in 15-23-706.

History: **En. Sec. 4, Ch. 641, L. 1991.**

15-23-708 through 15-23-715 reserved.

15-23-716. *(Temporary)* **Surtax — distribution.** (1) Each person required to pay the coal gross proceeds tax under this part shall pay, in addition to the tax liability determined under 15-23-703, a surtax of 7% of the tax liability.

(2) Notwithstanding the provisions of 15-23-707, the money received from county treasurers from the surtax collected under this section must, in

accordance with the provisions of 15-1-501(6), be deposited to the credit of the state general fund.

History: En. Sec. 1, Ch. 15, Sp. L. July 1992; amd. Sec. 2, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 near middle of (2), after "must", inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Retroactive Applicability — Termination: Section 39(3), Ch. 15, Sp. L. July 1992, provided that this section applies to production occurring after December 31, 1991, and before January 1, 1993. This section terminates upon receipt of taxes on production occurring prior to January 1, 1993.

Part 8

Metal Mines Gross Proceeds

Part Cross-References

Classification and taxable percentage for metal mines gross proceeds, 15-6-132.

Mining license taxes, Title 15, ch. 37.

15-23-801. Definitions. As used in this part, the following definitions apply:

(1) "Agreement not at arm's length" means an agreement between parties where the sales price does not represent market value.

(2) "Department" means the department of revenue.

(3) "Gross proceeds" or "gross metal yield" or "gross value of product" means the receipts realized from the extraction and sale of metals or concentrate containing metals.

(4) "Merchantable value" means the receipts of all salable metals produced or extracted in a county over a 12-month period. If the extracted ores are milled, smelted, or reduced by the taxpayer, the merchantable value in the county in which they are extracted is the receipts received for these metals after processing.

(5) "Receipts received" means the monetary payment or refined metal received by the mining company from the metal trader, smelter, roaster, or refinery, determined by multiplying the quantity of metal received by the metal trader, smelter, roaster, or refinery by the quoted price for the metal and then subtracting basic treatment and refinery charges, quantity deductions, price deductions, interest, and penalty metal, impurity, and moisture deductions as specified by contract between the mining company and the receiving metal trader, smelter, roaster, or refinery. Deductions are not allowed, either directly or indirectly as an offset to payments, for the cost of transportation from the mine or mill to the smelter, roaster, or refinery. Demurrage, storage, interest, or any other miscellaneous costs related to transporting the mineral product are considered transportation and are not deductible.

History: En. 84-7901 by Sec. 7, Ch. 498, L. 1977; R.C.M. 1947, 84-7901; amd. Sec. 1, Ch. 672, L. 1989.

Cross-References

Minerals as real estate, 15-1-101.

15-23-802. Metal mines — ad valorem taxation — reports and sampling. (1) Each person mining or extracting gold, silver, copper, lead, or other metals from any mine or mining property located within this state must, on or before March 31 each year, file with the department of revenue a statement of the gross metal yield from each mine or mining property owned or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department and shall contain the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which such ore, concentrate, or other mineral products or deposits have been shipped or sold during the period covered by the statement;

(e) the gross yield of such ores, concentrates, mineral products, or deposits in constituents of commercial value; that is, the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of such ores, concentrates, or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the gross value of product in dollars and cents; and

(g) any other information requested by the department.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore, concentrate, or other mineral products or deposits are shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property.

History: En. 84-7902 by Sec. 8, Ch. 498, L. 1977; R.C.M. 1947, 84-7902; amd. Sec. 1, Ch. 288, L. 1981.

Cross-References

County Assessor as agent of Department, 15-8-102.

15-23-803. Valuation — gross proceeds. On or before July 1 each year, the department shall determine the merchantable value of all metal production from the previous calendar year. The department shall transmit to its agent in each county where metals are produced the merchantable value as has been determined by the department for placement on the assessment roll after subtracting such portion of the proceeds as may be exempt from property taxation.

History: En. 84-7903 by Sec. 9, Ch. 498, L. 1977; R.C.M. 1947, 84-7903.

15-23-804. Taxation of merchantable value. The department's agent shall prepare from the reported valuation a tax roll which shall be transmitted to the county treasurer on or before September 15 each year. The county treasurer shall proceed to give full notice thereof to each metal producer and to collect the taxes due at the times provided for in 15-16-102, and any delinquencies in the payment of same shall be subject to the interest and penalties provided for in 15-16-102.

History: En. 84-7904 by Sec. 10, Ch. 498, L. 1977; R.C.M. 1947, 84-7904.

15-23-805. Imputed value — procedure for metals. If there is no sale or the sale is by an agreement not at arm's length or no statement is filed, the department shall impute the merchantable value of the metal. When imputing value, the department shall consider all appropriate market information available. When the imputed value is contested in any proceedings, the burden of proof is with the contesting party.

History: En. 84-7905 by Sec. 11, Ch. 498, L. 1977; R.C.M. 1947, 84-7905.

15-23-806. Lien of tax. The tax or penalty on gross proceeds is a lien upon the mine from which the metal is extracted and is a prior lien upon all owned or leased personal property and improvements used in extracting the ore or metal. The tax shall be collected in the manner provided in chapters 16, 17, and 18 of this title.

History: En. 84-7906 by Sec. 12, Ch. 498, L. 1977; R.C.M. 1947, 84-7906; amd. Sec. 12, Ch. 581, L. 1979.

15-23-807. Assessment procedures. The gross proceeds of metal mines shall be assessed under the provisions of 15-23-101 through 15-23-107.

History: En. 84-7907 by Sec. 13, Ch. 498, L. 1977; R.C.M. 1947, 84-7907; amd. Sec. 13, Ch. 581, L. 1979.

CHAPTER 24

SPECIAL PROPERTY TAX APPLICATIONS

Part 1 — Motor Vehicle Fleets

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Part 1

Motor Vehicle Fleets

15-24-101. Assessment of proportionally registered interstate motor vehicle fleets — tax payment required for registration. (1) The department of revenue shall assess, for the purpose of personal property taxes, the taxable vehicles in interstate motor vehicle fleets proportionally registered under the provisions of 61-3-711 through 61-3-733, and the assessment must be apportioned on the ratio of total miles traveled to in-state miles traveled as prescribed by 61-3-721. Interstate motor vehicle fleets are assessable for taxation purposes upon application for proportional registration and are assessed to the persons who own or claim the fleet or in whose possession or control the fleet is at the time of the application.

(2) With respect to any fleet contained in an original application that has a situs for the purpose of property taxation in Montana by the terms of this part or any other provision of the laws of Montana, the taxes on taxable vehicles are apportioned as provided in 15-24-303.

(3) With respect to any fleet contained in a renewal application, the taxable vehicles are assessed and taxed for a full year.

(4) Automobiles and trucks having a rated capacity of 1 ton or less that are part of an interstate motor vehicle fleet are subject to property tax. If the fleet is proportionally registered, the tax is apportioned in the same fashion as the registration fee under 61-3-721.

(5) Vehicles contained in a fleet for which current taxes or fees, or both, have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of taxes, fees, or both for the current registration year. The payment of personal property taxes, fees, or both is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

History: En. Sec. 1, Ch. 89, L. 1965; amd. Sec. 16, Ch. 516, L. 1973; R.C.M. 1947, 84-727; amd. Sec. 14, Ch. 614, L. 1981; amd. Sec. 8, Ch. 611, L. 1987; amd. Sec. 1, Ch. 615, L. 1989; amd. Sec. 24, Ch. 10, L. 1993; amd. Sec. 1, Ch. 39, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 10 in (4), in first sentence, substituted "1 ton or less" for "three-quarters of a ton or less"; and made minor changes in style.

Chapter 39 in (4), in first sentence, substituted "1 ton or less" for "three-quarters of a ton or less"; and made minor changes in style. Amendment effective July 1, 1993.

15-24-102. Valuation of interstate fleets — determination of aggregate tax due — exemption from mill levies. The department of revenue shall assess the taxable vehicles of any interstate motor vehicle fleet making application for proportional registration, as follows:

(1) The purchase price of the taxable vehicles depreciated by a schedule as prescribed by the department determines the depreciated value.

(2) The depreciated value multiplied by the percent of miles traveled in Montana, as prescribed by 61-3-721, is the market value.

(3) The sum of the market value of all taxable vehicles included in the fleet multiplied by 9% is the taxable value for the entire fleet as provided in 15-6-138.

(4) To determine the amount of tax due, the taxable value of the entire fleet must be multiplied by the statewide average county mill levy plus state levies as provided in 15-24-103.

(5) To determine the tax due under this chapter, state levies applicable to interstate motor vehicle fleets include but are not limited to levies imposed under 15-10-101, 15-10-106, 20-9-331, 20-9-333, 20-9-360, and 53-2-813.

(6) All taxes and fees collected on motor vehicle fleets under this chapter must be deposited and distributed as provided in 15-24-105.

History: **En. Sec. 2, Ch. 89, L. 1965; amd. Sec. 17, Ch. 516, L. 1973; amd. Sec. 54, Ch. 566, L. 1977; R.C.M. 1947, 84-728; amd. Sec. 20, Ch. 693, L. 1979; amd. Sec. 15, Ch. 614, L. 1981; amd. Sec. 25, Ch. 10, L. 1993; amd. Sec. 2, Ch. 39, L. 1993.**

Compiler's Comments

1993 Amendments: Chapter 10 in (2) and (3) substituted "market value" for "assessed value"; in (3) reduced tax rate from 16% to 9%; in (4), at end, inserted reference to 15-24-103; and made minor changes in style.

Chapter 39 in (2) and (3) substituted "market value" for "assessed value"; in (3) reduced tax rate from 16% to 9%; and at end inserted reference to 15-6-138; in (4), at end, inserted reference to 15-24-103; inserted (5) and (6) regarding determination of tax due and disposition and distribution of the tax proceeds; and made minor changes in style. Amendment effective July 1, 1993.

15-24-103. Determination of average levy in state — application to interstate fleets — cost stated in application for registration. (1) The department of revenue shall determine the aggregate tax in the entire state for state, county, and local purposes levied on the general property of the state in the previous year, excluding special levies on property for local improvements and special state levies on livestock for bounties, inspection, and protection purposes.

(2) From the total taxable valuation of the general property of the state, including net proceeds and the aggregate tax as determined, the department shall compute the average levy by dividing the aggregate tax by the total state taxable valuation. The rate so determined shall constitute the rate of taxation on the taxable value of taxable vehicles of an interstate motor vehicle fleet.

(3) The original cost of each taxable vehicle shall be included on the application for proportional registration under the provisions of 61-3-711 through 61-3-733. The department shall determine the original cost when the owner does not have this information on new or used vehicles or in the case of rebuilt vehicles.

History: **En. Sec. 3, Ch. 89, L. 1965; amd. Sec. 18, Ch. 516, L. 1973; R.C.M. 1947, 84-729; amd. Sec. 16, Ch. 614, L. 1981.**

15-24-104. Situs in state of proportionally registered fleets — collection of taxes and fees. (1) For the purposes of this part, any vehicle previously registered or which has had application for registration made under the provisions of 61-3-711 through 61-3-733 is hereby declared to have a situs in the state for the purposes of taxation.

(2) The department or its designated agent shall collect the personal property taxes, or license fees, or both prescribed in this part.

History: En. Sec. 4, Ch. 89, L. 1965; amd. Sec. 19, Ch. 516, L. 1973; R.C.M. 1947, 84-730; amd. Sec. 14, Ch. 581, L. 1979; amd. Sec. 17, Ch. 614, L. 1981.

15-24-105. Deposit and distribution of taxes and fees on proportionally registered fleets. The personal property taxes and license fees collected under this part shall be deposited with the state treasurer for distribution to the general fund of each county on the following basis:

(1) for personal property taxes, according to the ratio of the taxable valuation of each county to the total state taxable valuation; and

(2) for vehicle license fees, according to the ratio of vehicle license fees, other than fees derived from interstate motor vehicle fleets, collected in each county to the sum of all such fees collected in all the counties.

History: En. Sec. 5, Ch. 89, L. 1965; R.C.M. 1947, 84-731; amd. Sec. 18, Ch. 614, L. 1981; amd. Sec. 9, Ch. 611, L. 1987.

Part 2
Mobile Homes

Part Cross-References

Classification and taxable percentage for mobile homes and housetrailers, 15-6-134.

15-24-201. Definitions. As used in this part, the following definitions apply:

(1) "Dealer" means a person engaged in the distribution or sale of mobile homes.

(2) "Housetrailer" means a form of housing designed to be moved from one place to another by an independent power connected thereto, which is either 8 feet wide or less or 32 feet long or less.

(3) "Mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 32 feet in length, designed to be moved from one place to another by an independent power connected thereto.

History: En. Sec. 1, Ch. 275, L. 1965; amd. Sec. 4, Ch. 296, L. 1967; amd. Sec. 2, Ch. 450, L. 1975; R.C.M. 1947, 84-6601.

Cross-References

Definition of "mobile home", 15-1-101.

Enforcement by Department of Transportation personnel, 61-12-206.

15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker. (1) (a) The owner of a mobile home or housetrailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 15-24-206.

(b) The first payment is due within 30 days from the date of the notice of taxes due.

(c) The second payment is due no later than September 30 of the year in which the property is assessed.

(d) If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.

(2) Upon request, the treasurer shall notify a lienholder if taxes on a mobile home or housetrailer have not been paid.

(3) Taxes assessed against a mobile home after the second payment date must be prorated to reflect the remaining portion of the tax year. The prorated taxes must be added to the following year's tax roll and, except as provided in 15-24-206, are due with and must be collected with the first payment due in that year.

(4) The department of revenue shall issue tax-paid stickers to the county treasurers. Except as provided in 15-24-206 and 15-24-209, if a mobile home or housetrailer is to be moved and all taxes, interest, and penalties on the mobile home or housetrailer are paid in full, the treasurer shall issue a tax-paid sticker to the owner of the mobile home or housetrailer. Prior to and while in the process of moving the mobile home or housetrailer, the owner shall display the tax-paid sticker, which must be visible from the exterior of the mobile home or housetrailer. No mobile home movement declaration of destination provided for in 15-24-206 may be issued unless:

(a) the taxes have been paid in full to the county treasurer; or

(b) the exceptions in 15-24-206(3) or 15-24-209 apply.

(5) On the movement of a mobile home or housetrailer in violation of this part, the county treasurer for the county where the mobile home or housetrailer first comes to rest shall issue a written notice to the owner, showing the amount of delinquent taxes, special assessments, penalties, and interest due. In addition to the penalties provided in 15-16-102, 20% or $50, whichever is greater, must be added to the delinquent taxes as penalty for violation of this part. On receipt of the delinquent taxes, special assessments, penalties, and interest, the county treasurer shall forward all delinquent taxes, special assessments, penalties, and interest collected under 15-16-102 to the county treasurer for the county of origin. The county of destination shall retain the penalty.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; R.C.M. 1947, 84-4202(5)(a); amd. Sec. 15, Ch. 581, L. 1979; amd. Sec. 1, Ch. 159, L. 1981; amd. Sec. 1, Ch. 47, L. 1985; amd. Sec. 1, Ch. 360, L. 1987; amd. Sec. 1, Ch. 419, L. 1987; amd. Sec. 1, Ch. 238, L. 1989; amd. Sec. 1, Ch. 557, L. 1991.

Cross-References

Migratory personal property, 15-24-302.

Enforcement by Department of Transportation personnel, 61-12-206.

15-24-203. Tax receipt — when production required. If stopped on a highway or at a state vehicle weight station by a state highway patrol officer or state vehicle weight station attendant, a person transporting a mobile home or housetrailer must produce, if requested, the property-tax-paid receipt or a duplicate issued by the county treasurer where the vehicle was taxed.

History: En. Sec. 3, Ch. 275, L. 1965; R.C.M. 1947, 84-6603; amd. Sec. 16, Ch. 581, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-24-204. Failure to display or produce declaration, sticker, or receipt — penalty. (1) Whoever makes a false or fraudulent declaration of destination or, when required, fails to execute a declaration of destination or fails to display or produce a declaration of destination or tax-paid receipt, if a tax-paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than 6 months or by a fine of not more than $500, or both.

(2) Whoever fails to display a property-tax-paid sticker while in the process of moving a mobile home or housetrailer or to produce a property-tax-paid receipt from 15 days after the due date for personal property taxes of 1 year to the due date for personal property taxes of the next year, when the display of a tax-paid receipt is required, commits a misdemeanor punishable by a fine of not less than $10 or more than $50 or confinement in the county jail for not more than 30 days or both such fine and imprisonment.

History: En. Sec. 4, Ch. 275, L. 1965; amd. Sec. 7, Ch. 296, L. 1967; amd. Sec. 3, Ch. 450, L. 1975; R.C.M. 1947, 84-6604; amd. Sec. 2, Ch. 419, L. 1987; amd. Sec. 2, Ch. 238, L. 1989.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-24-205. Sections limited to taxable trailers. The provisions of this part shall apply only to those mobile homes and housetrailers, as defined in this part, subject to assessment and taxation under chapter 8, part 2, and 15-24-301.

History: En. Sec. 5, Ch. 275, L. 1965; amd. Sec. 8, Ch. 296, L. 1967; R.C.M. 1947, 84-6605.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-24-206. Declaration of destination on imported mobile homes — display — tax receipt — exemptions. (1) A person who brings a mobile home into the state shall immediately upon arrival in the state execute a written declaration, verified under oath, stating the destination of the mobile home and any other information the department of revenue may require and shall deliver the original of the declaration to whomever is on duty at the nearest port of entry station, state vehicle weight station, or other place the department may prescribe. He shall also immediately upon arrival in the state affix a copy of the declaration to the mobile home at a conspicuous place.

(2) The treasurer shall issue the mobile home movement declaration provided for in this section to a person required by this section to execute it, in quantities he requests to a maximum of 100. The treasurer shall issue additional quantities of the declaration to a maximum of 100 as the person requests at the discretion of the county treasurer upon receipt from the person of the previously issued declarations properly executed. Executed declarations must be delivered to the treasurer within 30 days from their issue.

(3) A person who moves a mobile home from a point within the state to another point within or without the state shall first:

(a) execute the declaration provided for in subsection (1), deliver the original of it to the treasurer of the county in which the move originates or to any other person the department may prescribe, and affix a copy of it in a conspicuous place on the mobile home to be moved;

(b) obtain from the county treasurer of the county in which the move originates a receipt showing:

(i) payment in full of property taxes with respect to that mobile home; or

(ii) payment of the property taxes provided for in 15-24-209.

(4) The provisions of subsection (3)(b) do not apply whenever a person moves a mobile home:

(a) from a point without to a point within the state;

(b) between places of business of dealers within or without the state;

(c) from the place of business of a dealer to a point within or without the state; or

(d) pursuant to the repossession of a mobile home, unless the treasurer has furnished the lienholder or secured party with timely notice of the delinquent tax due when information has been requested under 15-24-202(2).

History: (1), (3), (4)En. Sec. 5, Ch. 296, L. 1967; amd. Sec. 250, Ch. 516, L. 1973; Sec. 84-6606, R.C.M. 1947; (2)En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; Sec. 84-4202, R.C.M. 1947; R.C.M. 1947, 84-4202(5)(b), 84-6606; amd. Sec. 17, Ch. 581, L. 1979; amd. Sec. 2, Ch. 557, L. 1991.

15-24-207. Department to make rules. The department of revenue may make reasonable rules necessary for or as an aid to effectuation of the purposes of this part.

History: En. Sec. 6, Ch. 296, L. 1967; amd. Sec. 251, Ch. 516, L. 1973; R.C.M. 1947, 84-6607.

15-24-208. Penalty for moving mobile home on which taxes due. Any person that moves a mobile home on which property taxes are unpaid is guilty of a misdemeanor.

History: En. 84-6608 by Sec. 1, Ch. 250, L. 1977; R.C.M. 1947, 84-6608.

Cross-References

Misdemeanor penalty, 46-18-212.

15-24-209. Limit on delinquent mobile home taxes chargeable to security interest holder. The holder of a perfected security interest in a mobile home or housetrailer who repossesses the mobile home or housetrailer as provided by law and as authorized in the contract between the owner and the secured party may not be required to pay delinquent property taxes for more than 3 years as a condition of moving the mobile home or housetrailer or transferring it to another person. Any additional delinquent taxes due upon the mobile home or housetrailer are a lien upon any other personal or real property of the person who was required by law to pay the delinquent taxes at the time the taxes were due.

History: En. Sec. 3, Ch. 557, L. 1991.

15-24-210. Notice of impending sale to certain lienholders. After entry of a notation under 15-16-115(2) concerning a mobile home that is not taxed as an improvement to real property but before directing the sheriff to make a levy and sale on the mobile home, the treasurer shall notify a person who has a properly perfected security interest in the mobile home and who has furnished the treasurer a copy of the instrument by which the interest was perfected of the levy and sale. The notice must state that the sheriff may soon be requested to make a levy and sale on the mobile home.

History: En. Sec. 4, Ch. 557, L. 1991.

Part 3

Migratory Personal Property

15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Any motor vehicle not subject to a fee in lieu of tax brought, driven, or coming into this state by any nonresident person temporarily employed in Montana and used exclusively for transportation of such person is subject to taxation and assessment for taxes as follows:

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee in lieu of taxation of $35 per machine for the calendar year in which the fee is collected. The machines shall be subject to taxation under class eight only if they are sold in Montana.

History: En. Sec. 1, Ch. 41, L. 1953; amd. Sec. 4, Ch. 290, L. 1967; amd. Sec. 1, Ch. 370, L. 1974; amd. Sec. 65, Ch. 566, L. 1977; R.C.M. 1947, 84-6008; amd. Sec. 1, Ch. 603, L. 1979;

amd. Sec. 21, Ch. 693, L. 1979; amd. Sec. 6, Ch. 598, L. 1981; amd. Sec. 4, Ch. 613, L. 1981; amd. Sec. 19, Ch. 614, L. 1981; amd. Sec. 1, Ch. 48, L. 1983; amd. Sec. 9, Ch. 516, L. 1985; amd. Sec. 10, Ch. 611, L. 1987.

Cross-References

Applicability to mobile homes and housetrailers, 15-24-205.

Registration of foreign motor vehicles, Title 61, ch. 3, part 7.

Transportation of vehicles through the state, Title 61, ch. 4, part 3.

Custom combiner's fee in lieu of taxes required under this section, 61-10-130.

Liability for per capita assessment fee on sheep, 81-7-303.

15-24-302. Collection procedure. All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408, 15-16-111 through 15-16-115, 15-16-404, 15-17-911, and 15-24-202, as amended, except:

(1) taxation of motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited above; and

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2.

History: En. Sec. 3, Ch. 41, L. 1953; amd. Sec. 7, Ch. 260, L. 1977; R.C.M. 1947, 84-6010; amd. Sec. 18, Ch. 581, L. 1979; amd. Sec. 9, Ch. 663, L. 1979; amd. Sec. 2, Ch. 159, L. 1981; amd. Sec. 2, Ch. 598, L. 1981; amd. Sec. 51, Ch. 587, L. 1987.

15-24-303. Proration of tax on personal property — refund. (1) The tax on personal property brought, driven, coming into, or otherwise located in the state on or after the assessment date must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year. This section does not apply to motor vehicles taxed under Title 61, chapter 3, part 5.

(2) If property upon which taxes have been paid is removed from the state, the taxpayer may obtain a refund of a prorated portion of the taxes, subject to the requirements of 15-16-613.

History: En. Sec. 4, Ch. 41, L. 1953; amd. Sec. 8, Ch. 260, L. 1977; R.C.M. 1947, 84-6011; amd. Sec. 2, Ch. 615, L. 1989; amd. Sec. 2, Ch. 587, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 587 in (1), near beginning after "into", substituted "or otherwise located in the state on or" for "any county" and inserted second sentence concerning nonapplicability to motor vehicles; inserted (2) concerning prorated refund; and made minor changes in style. Amendment effective April 28, 1993.

Effective Date — Retroactive Applicability: Section 3, Ch. 587, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved April 28, 1993.

Cross-References

Proration of taxes on motor vehicle fleets, 15-24-101.

15-24-304. Prorated fee in lieu of tax — aircraft. (1) A person who acquires an aircraft required to be registered under subsections (2) through (6) of 67-3-201 after March 1 in any year shall register the aircraft within 30 days of acquiring it.

(2) The fee in lieu of tax must be prorated for aircraft registered for a period less than 1 year in the same manner as personal property taxes are prorated in 15-24-303.

(3) A person failing to register an aircraft within 30 days following acquisition of the aircraft or bringing the aircraft into the state for commercial purposes is subject to the penalty provided in 67-3-202.

(4) A person owning a migratory aircraft shall register as prescribed in 67-3-201(5) and pay the fee in lieu of tax.

History: En. 84-4218 by Sec. 3, Ch. 542, L. 1975; amd. Sec. 3, Ch. 210, L. 1977; R.C.M. 1947, 84-4218; amd. Sec. 1, Ch. 220, L. 1981; amd. Sec. 4, Ch. 157, L. 1983; amd. Sec. 7, Ch. 453, L. 1987.

15-24-305. Taxation of motion picture and television commercial property. Except as provided in 61-3-520, property used exclusively for filming motion pictures or television commercials and that remains in the state for a period exceeding 180 consecutive days in a calendar year is subject to assessment and taxation as all other property subject to property taxation.

History: En. Sec. 2, Ch. 525, L. 1989.

Compiler's Comments

Repeal of Termination Date: Section 1, Ch. 55, L. 1993, repealed sec. 11, Ch. 525, L. 1989, which terminated this section effective December 31, 1993. Repealer effective February 18, 1993.

Cross-References

Exemption for motion picture and television commercial property, 15-6-215.

Taxation of vehicles used exclusively in filming motion pictures or television commercials, 61-3-520.

Part 4
Business Inventories
(Repealed)

15-24-401. Repealed. Sec. 35, Ch. 581, L. 1979.

History: En. 84-422.1 by Sec. 1, Ch. 182, L. 1977; R.C.M. 1947, 84-422.1.

15-24-402. Repealed. Sec. 6, Ch. 613, L. 1981.

History: En. 84-422.2 by Sec. 1, Ch. 255, L. 1977; R.C.M. 1947, 84-422.2.

15-24-403. Repealed. Sec. 6, Ch. 613, L. 1981.

History: En. 84-422.3 by Sec. 2, Ch. 255, L. 1977; R.C.M. 1947, 84-422.3.

Part 5
Banks
(Repealed. Sec. 17, Ch. 634, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

15-24-501. (1), (2)En. Sec. 6, Ch. 64, L. 1929; re-en. Sec. 2000.6, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1957; amd. Sec. 1, Ch. 516, L. 1973; amd. Sec. 3, Ch. 341, L. 1975; Sec. 84-308, R.C.M. 1947; (3)En. Sec. 2, Ch. 64, L. 1929; re-en. Sec. 2000.2, R.C.M. 1935; (4)En. Sec. 3, Ch. 64, L. 1929; re-en. Sec. 2000.3, R.C.M. 1935; Sec. 84-305, R.C.M. 1947; R.C.M. 1947, 84-304, 84-305, 84-308.

15-24-502. En. Sec. 1, Ch. 81, L. 1921; re-en. Sec. 2064, R.C.M. 1921; re-en. Sec. 2064, R.C.M. 1935; R.C.M. 1947, 84-4602.

15-24-503. En. Sec. 2, Ch. 81, L. 1921; re-en. Sec. 2065, R.C.M. 1921; re-en. Sec. 2065, R.C.M. 1935; R.C.M. 1947, 84-4603.

15-24-504. En. Sec. 3, Ch. 81, L. 1921; re-en. Sec. 2066, R.C.M. 1921; re-en. Sec. 2066, R.C.M. 1935; amd. Sec. 86, Ch. 405, L. 1973; amd. Sec. 16, Ch. 388, L. 1975; R.C.M. 1947, 84-4604.

15-24-505. En. Sec. 4, Ch. 81, L. 1921; re-en. Sec. 2067, R.C.M. 1921; amd. Sec. 1, Ch. 64, L. 1927; re-en. Sec. 2067, R.C.M. 1935; amd. Sec. 87, Ch. 405, L. 1973; amd. Sec. 17, Ch. 388, L. 1975; amd. Sec. 55, Ch. 566, L. 1977; R.C.M. 1947, 84-4605.

15-24-506. En. Sec. 1, Ch. 72, L. 1967; amd. Sec. 88, Ch. 405, L. 1973; amd. Sec. 18, Ch. 388, L. 1975; R.C.M. 1947, 84-4606.

15-24-507. En. Sec. 9, p. 76, L. 1891; re-en. Sec. 3694, Pol. C. 1895; re-en. Sec. 2506, Rev. C. 1907; re-en. Sec. 2063, R.C.M. 1921; re-en. Sec. 2063, R.C.M. 1935; R.C.M. 1947, 84-4601.

15-24-508. En. Sec. 5, Ch. 64, L. 1929; re-en. Sec. 2000.5, R.C.M. 1935; amd. Sec. 2, Ch. 25, L. 1971; amd. Sec. 1, Ch. 501, L. 1977; R.C.M. 1947, 84-307.

Part 6

Insurance Companies

15-24-601. Assessment and taxation of insurance companies. Every insurance company organized under the laws of the state shall be assessed and taxed upon its real estate and personal property at the same rate and in the same manner as other property is assessed and taxed in this state.

History: En. Sec. 1, Ch. 64, L. 1915; re-en. Sec. 2111, R.C.M. 1921; re-en. Sec. 2111, R.C.M. 1935; R.C.M. 1947, 84-5101.

15-24-602. Determining insurance company taxable property. In computing the taxable property of insurance companies organized under the laws of Montana, there must be deducted therefrom:

(1) the value of the real property on which the company pays taxes, if the real estate is assessed to the company as other real estate;

(2) the legal reserve required by the laws of Montana or by the insurance department of Montana for the protection of policyholders;

(3) all assets not admitted as such by the state or by the insurance department of Montana;

(4) debts and liabilities as may be due or owing by the company; and

(5) the value of a title plant owned by a title insurer or a title agent, as those terms are defined in 33-25-105.

History: En. Sec. 2, Ch. 64, L. 1915; re-en. Sec. 2112, R.C.M. 1921; re-en. Sec. 2112, R.C.M. 1935; R.C.M. 1947, 84-5102; amd. Sec. 2, Ch. 617, L. 1989.

15-24-603. Repealed. Sec. 17, Ch. 634, L. 1979.

History: En. Sec. 1, Ch. 63, L. 1929; re-en. Sec. 2112.1, R.C.M. 1935; amd. Sec. 59, Ch. 566, L. 1977; R.C.M. 1947, 84-5103.

Part 7

Production Credit Associations

15-24-701. Production credit associations — assessment and payment. Every production credit association organized under the provisions of section 1131d of Title 12, United States Codes Annotated, shall be assessed for and pay taxes upon all real and personal property owned by such association.

History: En. Sec. 1, Ch. 35, L. 1951; amd. Sec. 113, Ch. 405, L. 1973; amd. Sec. 19, Ch. 388, L. 1975; R.C.M. 1947, 84-5801; amd. Sec. 12, Ch. 634, L. 1979.

Part 8

Building and Loan Associations

15-24-801. Savings and loan associations — taxation. Every savings and loan association subject to regulation under Title 32, chapter 2, shall be assessed for and pay taxes upon all real and personal property owned by the association. The secretary of an association shall furnish to the department of revenue or its agent in the county in which the principal office of the association is located, within 5 days after demand, a condensed statement verified by his oath of the resources and liabilities of the association as disclosed by its books at noon on January 1 in each year. If the secretary fails to make the statement hereby required, the department or its agent shall immediately obtain the information from any other available source, and for this purpose it shall have access to the books of the association. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by the association, which assessment shall be as fair and equitable as it may be able to make from the best information available, or the assessor may, for the purpose of the assessment, adopt the figures disclosed by any prior report made by the association to any state or federal officer under a state or federal law. A person required by this section to make the statement provided for in this section who fails to furnish it is guilty of a misdemeanor.

History: En. Sec. 20, Ch. 57, L. 1927; amd. Sec. 1, Ch. 62, L. 1929; re-en. Sec. 6355.21, R.C.M. 1935; amd. Sec. 2, Ch. 391, L. 1973; amd. Sec. 1, Ch. 388, L. 1975; Sec. 7-122, R.C.M. 1947; amd. and redes. 84-7001 by Sec. 76, Ch. 431, L. 1975; R.C.M. 1947, 84-7601; amd. Sec. 13, Ch. 634, L. 1979.

Cross-References

County Assessor as agent of the Department, 15-8-102.

Misdemeanor penalty, 46-18-212.

Part 9
Livestock

Part Cross-References

Exemption for livestock less than 9 months of age and swine less than 3 months of age, 15-6-207.

Levy on cattle — Livestock Protection Committee, 81-6-104.

Levy on cattle — cattle protective districts, 81-6-204, 81-6-209.

State levy on livestock for predator control, 81-7-103, 81-7-104.

County levy on livestock for predator control, 81-7-201.

County levy for sheep predator control, 81-7-303.

County levy for livestock shows and sales, 81-8-504.

15-24-901. Definition. As used in this part, "livestock" includes those animals specified in 15-1-101(1)(i).

History: En. 84-5201.3 by Sec. 1, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.3; amd. Sec. 4, Ch. 570, L. 1985; amd. Sec. 45, Ch. 370, L. 1987.

15-24-902. Assessment of livestock. The department of revenue or its agent shall assess all nonexempt livestock in each county where they are located on March 1 of each year. The livestock must be assessed to the person by whom they were owned or claimed or in whose possession or control they were at midnight of March 1 in that year.

History: En. Sec. 3720, Pol. C. 1895; re-en. Sec. 2530, Rev. C. 1907; re-en. Sec. 2068, R.C.M. 1921; re-en. Sec. 2068, R.C.M. 1935; R.C.M. 1947, 84-5201; amd. Sec. 8, Ch. 598, L. 1989.

Cross-References

Roundup of horses that have escaped assessment, Title 81, ch. 4, part 5.

15-24-903. Duty of owner to assist in assessment. (1) The owner of livestock, as defined in 15-24-901, or his agent, at the time of assessment shall make and deliver to the department of revenue or its agent in the county or counties where his livestock were located on March 1, a written statement, under oath, showing the different kinds of his livestock within the county or counties belonging to him or under his charge, with their marks and brands.

(2) As used in this section, "agent" means any person, persons, company, or corporation, including a feedlot operator or owner of grazing land, who has charge of livestock on the assessment date.

History: En. 84-5201.1 by Sec. 4, Ch. 507, L. 1975; amd. Sec. 6, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.1; amd. Sec. 2, Ch. 663, L. 1979; amd. Sec. 9, Ch. 598, L. 1989.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-24-904. Penalty for violation of law. If any person, persons, company, or corporation who is the owner or has in charge any livestock within this state fails to make the statement or statements as provided in 15-24-903, the county assessor may, after 10 days' notice to the person who failed to file the report, increase the assessment by 10% as a penalty.

History: En. Sec. 7, Ch. 125, L. 1909; re-en. Sec. 2075, R.C.M. 1921; re-en. Sec. 2075, R.C.M. 1935; amd. Sec. 5, Ch. 507, L. 1975; R.C.M. 1947, 84-5208; amd. Sec. 3, Ch. 663, L. 1979.

15-24-905. Livestock brought into state — notice to department of revenue or its agent. The owner or the agent, manager, or foreman of any person, corporation, or association bringing livestock into this state after March 1 shall immediately after said livestock cross the state line forward to the department of revenue or its agent in the county into which the livestock are moved a registered or certified letter, which letter shall contain the name of the owner of such livestock, the number thereof, the brand thereon, and the ages of the same, together with the time and place at which said livestock were brought across the state line, provided that the department of livestock at least once each month furnish from its own records to the department of revenue or its agent in the county into which such livestock are moved a list of the number and kind of livestock so moved, together with the name of the owner thereof.

History: En. Sec. 5, Ch. 41, L. 1953; amd. Sec. 114, Ch. 405, L. 1973; amd. Sec. 20, Ch. 388, L. 1975; R.C.M. 1947, 84-6012; amd. Sec. 7, Ch. 663, L. 1979; amd. Sec. 10, Ch. 598, L. 1989.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-24-906. Collection of tax on livestock. The department of revenue or its agent, upon receipt of such letter or other information that livestock has been brought into his county from outside of the state after January 1 in any year, shall immediately proceed under the provisions of this part.

History: En. Sec. 6, Ch. 41, L. 1953; amd. Sec. 115, Ch. 405, L. 1973; amd. Sec. 21, Ch. 388, L. 1975; amd. Sec. 9, Ch. 260, L. 1977; R.C.M. 1947, 84-6013.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-24-907. Repealed. Sec. 15, Ch. 663, L. 1979.

History: En. Sec. 7, Ch. 41, L. 1953; amd. Sec. 116, Ch. 405, L. 1973; amd. Sec. 10, Ch. 260, L. 1977; R.C.M. 1947, 84-6014.

15-24-908 through 15-24-911. Repealed. Sec. 11, Ch. 598, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

15-24-908. En. 84-5201.4 by Sec. 2, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.4; amd. Sec. 11, Ch. 663, L. 1979.

15-24-909. En. 84-5201.5 by Sec. 3, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.5; amd. Sec. 12, Ch. 663, L. 1979.

15-24-910. En. 84-5201.6 by Sec. 4, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.6; amd. Sec. 13, Ch. 663, L. 1979.

15-24-911. En. Sec. 10, Ch. 663, L. 1979; amd. Sec. 7, Ch. 20, L. 1985.

15-24-912 through 15-24-919 reserved.

15-24-920. Election for proration of tax on livestock — refunds — additional assessment. (1) An owner of livestock who moves the livestock interstate may elect to have the nonexempt livestock taxed on a prorated basis.

(2) The owner shall file an election with the county assessor:

(a) on the statement required in 15-24-903; or

(b) if the livestock have taxable situs in the state before March 1, on a form prescribed by the department. The statement must indicate the number of months the owner's livestock will be in the state.

(3) If a livestock owner elects to be taxed on a prorated basis, the tax on livestock that are moved interstate must be prorated according to the ratio of the number of months the livestock have taxable situs in the county to the total number of months in the taxable year. Livestock must be prorated as provided in this section regardless of when the livestock gain taxable situs in the county during the taxable year.

(4) Subject to the provisions of 15-16-603 through 15-16-605, a taxpayer whose nonexempt livestock are assessed under subsection (3) for a period longer than the actual number of months that the livestock have taxable situs in the state is entitled to a refund. The amount of the refund is equal to the difference between the original prorated amount paid and the subsequent amount owed after the actual number of tax situs months are determined at the end of the tax year. A taxpayer shall apply for a refund allowed under this subsection by January 31 following the year of assessment. The application must include a statement showing the date when the livestock were moved out of the state.

(5) A taxpayer whose nonexempt livestock are assessed under subsection (3) for a period shorter than the actual number of months that the livestock have taxable situs is subject to additional taxes for the number of additional months that the livestock has taxable situs in the state.

History: En. Sec. 1, Ch. 627, L. 1991; amd. Sec. 7, Ch. 539, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 539 in (4), near beginning, substituted "15-16-603 through 15-16-605" for "15-16-601"; and made minor changes in style.

15-24-921. Per capita tax levy to pay expenses of enforcing livestock laws. (1) In addition to appropriations made for such purposes, a per capita tax is authorized and directed to be levied by the county assessor on all poultry and bees, all swine 3 months of age or older, and all other livestock

9 months of age or older in each county of this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the livestock laws of the state and for the payment of bounties on wild animals as hereinafter specified.

(2) As used in this section, "livestock" means cattle, sheep, swine, poultry, bees, goats, horses, mules, asses, llamas, alpacas, domestic bison, and domestic ungulates.

History: En. Sec. 1, Ch. 127, L. 1915; re-en. Sec. 2076, R.C.M. 1921; re-en. Sec. 2076, R.C.M. 1935; R.C.M. 1947, 84-5209; amd. Sec. 3, Ch. 660, L. 1987; amd. Sec. 2, Ch. 627, L. 1991; amd. Sec. 2, Ch. 417, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 417 in (2) inserted "alpacas"; and made minor changes in style.

15-24-922. Board of livestock to prescribe per capita levy — refunds. (1) The board of livestock shall annually prescribe the amount of the per capita levy to be made against livestock of all classes for the purpose indicated in 15-24-921.

(2) The per capita tax levy must be calculated each year to provide not more than 110% of the average annual revenue that was generated in the 3 previous years, beginning with revenue generated by 81-7-104 and this section in the taxable years 1985, 1986, and 1987. The calculation shall apply a reasonable factor for nonpayment and late payment of taxes and for reimbursement to the counties pursuant to 15-24-925 for collection of the levy.

(3) (a) A livestock owner taxed under 15-24-920 is entitled to a refund of the per capita levy collected under 15-24-921 based on the number of months the livestock have taxable situs in the state. The amount of the refund is equal to the ratio of the number of months the livestock do not have taxable situs in the state to the number of months in the tax year, multiplied by the original per capita levy due. A taxpayer shall apply to the board of livestock on a form prescribed by the board for a refund allowed under this subsection by January 31 following the taxable year. The application must include a statement showing the date when the livestock were moved out of the state.

(b) For the purposes of 15-24-921 and this section, the per capita levy may not be prorated.

History: En. Sec. 2, Ch. 127, L. 1915; re-en. Sec. 2077, R.C.M. 1921; re-en. Sec. 2077, R.C.M. 1935; amd. Sec. 194, Ch. 516, L. 1973; R.C.M. 1947, 84-5210; amd. Sec. 10, Ch. 79, L. 1983; amd. Sec. 4, Ch. 660, L. 1987; amd. Sec. 3, Ch. 627, L. 1991.

15-24-923. Repealed. Sec. 12, Ch. 660, L. 1987.

History: En. Sec. 3, Ch. 127, L. 1915; re-en. Sec. 2078, R.C.M. 1921; amd. Sec. 1, Ch. 152, L. 1929; re-en. Sec. 2078, R.C.M. 1935; amd. Sec. 109, Ch. 147, L. 1963; amd. Sec. 1, Ch. 422, L. 1975; amd. Sec. 1, Ch. 120, L. 1977; amd. Sec. 60, Ch. 566, L. 1977; R.C.M. 1947, 84-5211; amd. Sec. 1, Ch. 445, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

15-24-924. Repealed. Sec. 12, Ch. 660, L. 1987.

History: En. Sec. 4, Ch. 127, L. 1915; re-en. Sec. 2079, R.C.M. 1921; re-en. Sec. 2079, R.C.M. 1935; amd. Sec. 89, Ch. 147, L. 1963; amd. Sec. 2, Ch. 422, L. 1975; amd. Sec. 2, Ch. 120, L. 1977; R.C.M. 1947, 84-5212; amd. Sec. 1, Ch. 277, L. 1983.

15-24-925. Reimbursement to county — transmission of taxes from county to state treasurer. (1) The county treasurer may withhold 2%

of the money received under 15-24-921 as reimbursement to the county for the collection of the levy on livestock.

(2) Except for the amount withheld under subsection (1), the taxes levied and the money collected pursuant to the provisions of 15-24-922 shall be transmitted to the state treasury by the county treasurer of each county, as provided in 15-1-504, but not later than July 1 following assessment. The county treasurer shall designate the amount received from the tax levied on sheep and the amount received from the tax levied on all other livestock and shall specify the separate amounts in his report to the state treasurer. The money, when received by the state treasurer, shall be deposited to the credit of the department of livestock.

History: En. Sec. 5, Ch. 127, L. 1915; re-en. Sec. 2080, R.C.M. 1921; re-en. Sec. 2080, R.C.M. 1935; R.C.M. 1947, 84-5213; amd. Sec. 1, Ch. 100, L. 1983; amd. Sec. 3, Ch. 444, L. 1983; amd. Sec. 5, Ch. 660, L. 1987.

15-24-926. Livestock reserve fund. (1) The county treasurer may, at the discretion of the county governing body, deposit up to 5% of the property tax collected each year on livestock or each year on a prorated basis as provided in 15-24-920 in a livestock reserve fund.

(2) Refunds for overpayment of property tax on livestock must be issued from this fund.

(3) When the amount in a livestock reserve fund exceeds 10% of the total property tax collected in a year on livestock or each year on a prorated basis as provided in 15-24-920, the excess funds must be transferred to the county general fund and included in the next year's county budget.

History: En. Sec. 14, Ch. 663, L. 1979; amd. Sec. 4, Ch. 627, L. 1991.

15-24-927 through 15-24-930 reserved.

15-24-931. Assessment of swine. (1) Each swine producer shall submit a statement in the manner prescribed by the department of revenue showing the number of pigs owned in each of the following classes as of January 1:

(a) market hogs, which are hogs between 3 months and 6 months of age and which have a conclusively presumed weight factor of 150 pounds;

(b) breeding sows, which have a conclusively presumed weight factor of 300 pounds;

(c) breeding boars, which have a conclusively presumed weight factor of 300 pounds.

(2) The department shall determine market value of swine by multiplying the following average USDA Omaha quotation price over the preceding 5 years, less $2 per hundred in the case of market hogs and breeding sows, times the conclusively presumed weight of each pig in the class:

(a) market hogs—USDA Omaha quotation for barrows and gilts, grades 1 to 3, at 230 to 240 pounds;

(b) breeding sows—USDA Omaha quotation for sows, grades 1 to 2, at 300 to 350 pounds;

(c) breeding boars—valued the same as market hogs.

(3) The department shall apply the same equalization factor to swine as to other classes of livestock.

(4) The department shall publish the most recent 5-year average USDA Omaha quotation price for each class in the Administrative Rules of Montana.

History: **En. 84-5222 by Sec. 1, Ch. 393, L. 1977; R.C.M. 1947, 84-5222; amd. Sec. 68, Ch. 575, L. 1981.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Swine less than 3 months of age exempt, 15-6-207.

15-24-932 through 15-24-940 reserved.

15-24-941. Repealed. Sec. 11, Ch. 598, L. 1989.

History: **En. Sec. 4, Ch. 663, L. 1979.**

15-24-942. Repealed. Sec. 11, Ch. 598, L. 1989.

History: **En. Sec. 5, Ch. 663, L. 1979.**

15-24-943. Repealed. Sec. 11, Ch. 598, L. 1989.

History: **En. Sec. 6, Ch. 663, L. 1979.**

Part 10

Custom Combines

(Renumbered. Sec. 3, Ch. 183, L. 1989)

15-24-1001. Renumbered 61-10-130.

Part 11

Leasehold and Other Interests in U.S. Property

Part Cross-References

Exemption of United States property, 15-6-201.

15-24-1101. Federal property held under contract by private person subject to taxation. Real and/or personal property of the United States or any department or agency thereof held under contract of sale, lease, or other interest or estate therein by any person for his exclusive use shall be subject to assessment for ad valorem property taxation as provided in this part; provided that this part shall not apply to real property held and in immediate use and occupation by this state or any county, municipal corporation, or political subdivision therein.

History: **En. Sec. 1, Ch. 212, L. 1951; R.C.M. 1947, 84-6101.**

15-24-1102. Federal property held under contract of sale. When the property is held under a contract of sale or other agreement whereby upon payment the legal title is or may be acquired by the person, the real property shall be assessed and taxed as defined in Title 15, chapter 6, part 1, and 15-8-111 without deduction on account of the whole or any part of the purchase price or other sum due on the property remaining unpaid. The lien for the tax may not attach to, impair, or be enforced against any interest of the United States in the real property.

History: **En. Sec. 2, Ch. 212, L. 1951; amd. Sec. 66, Ch. 566, L. 1977; R.C.M. 1947, 84-6102; amd. Sec. 22, Ch. 693, L. 1979; amd. Sec. 46, Ch. 370, L. 1987; amd. Sec. 7, Ch. 10, Sp. L. June 1989.**

15-24-1103. Federal property held under lease. When the property is held under lease, other interest, or estate therein that is less than the fee, except under contract of sale, the property must be assessed and taxed for the value, as defined in Title 15, chapter 6, part 1, of the leasehold, interest, or estate in the property. The lien for the tax must attach to and be enforced against only the leasehold, interest, or estate in the property. Whenever the interest in the property is acquired through foreclosure, the lessor is liable for property taxes. When the United States authorizes the taxation of the property for the full assessed value of the fee, the property must be assessed for full assessed value as defined in 15-8-111.

History: En. Sec. 3, Ch. 212, L. 1951; amd. Sec. 67, Ch. 566, L. 1977; R.C.M. 1947, 84-6103; amd. Sec. 23, Ch. 693, L. 1979; amd. Sec. 47, Ch. 370, L. 1987; amd. Sec. 8, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 80, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 80 inserted third sentence holding lessor liable for property taxes when the property interest is acquired through foreclosure; and made minor changes in style. Amendment effective February 25, 1993.

Effective Date — Applicability: Section 4, Ch. 80, L. 1993, provided: "[This act] is effective on passage and approval and applies to any foreclosures occurring after [the effective date of this act]." Effective February 25, 1993.

15-24-1104. Collection of taxes on interests in United States lands. In addition to all other remedies available for the collection of taxes, all taxes levied in any year against property held as under the provisions of this part shall be a debt due and owing from the person so holding such property as of the date of delinquency for taxes on property for such tax year. If any such tax be not paid within 1 year from such date, the county within which such property is located may institute for itself, the state of Montana, and all other municipal corporations sharing in such taxes an action for the collection of said taxes, together with interest, costs, and other lawful charges thereon. At the time of commencement of such action, the county shall have the benefit of all laws of this state pertaining to provisional remedies against the properties, either real or personal, of said person.

History: En. Sec. 4, Ch. 212, L. 1951; R.C.M. 1947, 84-6104.

Cross-References

Collection of taxes by suit, Title 15, ch. 24, part 11.

Part 12

State and Other Exempt Property

Part Cross-References

Exemption of state and municipal property, 15-6-201.

15-24-1201. State and other exempt property held under contract — when taxable. Property of the state of Montana or any department, agency, or subdivision thereof or any other property not subject to ad valorem tax to the owner thereof by reason of the legal status of the owner, held under contract of sale or lease with option to purchase with lease moneys applicable to purchase price by any person for his exclusive use, shall be subject to assessment to purchaser or lessee for ad valorem property taxation.

History: En. Sec. 1, Ch. 39, L. 1965; R.C.M. 1947, 84-204.

15-24-1202. Taxable interests in state and other exempt property — assessment. When such property is held under a contract of sale or other agreement whereby on certain payment or payments the legal title is or may be acquired by such person, such property shall be assessed to such person and taxed without deduction on account of the whole or any part of the purchase price or other sum due on such property remaining unpaid, provided that the lien for such tax neither attach to, impair, nor be enforced against any interest of the state of Montana or any department, agency, or subdivision thereof.

History: En. Sec. 2, Ch. 39, L. 1965; R.C.M. 1947, 84-205.

15-24-1203. Privilege tax on industrial, trade, or other business use of tax-exempt property — exceptions. There is imposed and must be collected a tax upon the possession or other beneficial use for industrial, trade, or other business purposes enjoyed by any private individual, association, or corporation of any property, real or personal, that for any reason is exempt from taxation. The tax may not be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on public airport property are subject to tax. The tax may not be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax is imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts are not subject to the tax. The tax may not be imposed upon the possession or other beneficial use of railroad right-of-way or track owned by the United States or acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state or the United States retains ownership and the right-of-way or track is used exclusively for rail transportation. The tax may not be imposed on the beneficial use by a person of property held by a port authority, created under Title 7, chapter 14, part 11, or by a port authority owned by the United States or an agency of the United States, unless the port authority provides for the exclusive use of the property by the person.

History: En. Sec. 1, Ch. 370, L. 1969; amd. Sec. 1, Ch. 387, L. 1977; R.C.M. 1947, 84-207; amd. Sec. 3, Ch. 683, L. 1983; amd. Sec. 2, Ch. 591, L. 1987; amd. Sec. 12, Ch. 83, L. 1989; amd. Sec. 1, Ch. 621, L. 1991; amd. Sec. 1, Ch. 104, L. 1993; amd. Sec. 1, Ch. 427, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 104 in first sentence, at beginning, deleted "After March 17, 1969" and near middle, after "beneficial use", inserted "for industrial, trade, or other business purposes"; and made minor changes in style.

Chapter 427 inserted last sentence prohibiting imposition of tax on beneficial use of port authority property; and made minor changes in style. Amendment effective April 20, 1993.

Effective Date — Retroactive Applicability: Section 3, Ch. 427, L. 1993, provided: "[This act] is effective on passage and approval [approved April 20, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

15-24-1204. Rate of privilege — tax credit for federal payments in lieu of taxes. The tax imposed upon the possession or other beneficial use of tax-exempt property for industrial, trade, or other business purposes is on the separate private interest in the tax-exempt property. The amount of payments that are made in lieu of taxes must be credited against the amount of tax that is imposed upon the beneficial use of property owned by the federal government.

History: En. Sec. 2, Ch. 370, L. 1969; R.C.M. 1947, 84-208; amd. Sec. 2, Ch. 104, L. 1993; amd. Sec. 1, Ch. 256, L. 1993; amd. Sec. 2, Ch. 427, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 427 near beginning, after "tax-exempt property", substituted "for industrial, trade, or other business purposes is on the separate private interest in the tax-exempt property. The amount of payments that are made in lieu of taxes must be" for "shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof, provided that there shall be" and in second sentence, at end after "government", deleted "the amount of payments which are made in lieu of taxes"; and made minor changes in style. Amendment effective April 20, 1993.

Coordination Instruction: Section 2, Ch. 427, L. 1993, a coordination section, provided that if House Bill No. 312, Senate Bill No. 325, and [this act] are passed and approved, then 15-24-1204 is amended as provided in this section (see 1993 Session Law for text). House Bill No. 312 was passed and approved March 18, 1993, and Senate Bill No. 325 was passed and approved March 31, 1993. Therefore, the amendment to 15-24-1204 contained in this section is effective.

The amendments made by Ch. 104 and Ch. 256 were:

Chapter 104 near beginning, after "tax-exempt property", inserted "for industrial, trade, or other business purposes"; and made minor changes in style.

Chapter 256 at end of first sentence substituted "is on the separate private interest in the tax-exempt property" for "shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof"; and made minor changes in style.

Effective Date — Retroactive Applicability: Section 3, Ch. 427, L. 1993, provided: "[This act] is effective on passage and approval [approved April 20, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

Cross-References

Federal sums in lieu of taxes, Title 17, ch. 3, part 3.

15-24-1205. Privilege tax — assessment and collection — no lien. The tax imposed hereunder shall be assessed to such possessors or users of the tax-exempt property upon the same forms and shall be collected and distributed at the same time and in the same manner as taxes assessed to owners, possessors, or other claimants of property which is subject to ad valorem taxation, except that such taxes shall not become a lien against the property and no such tax-exempt property may be attached, encumbered, sold, or otherwise affected for the collection of the tax imposed hereunder.

History: En. Sec. 3, Ch. 370, L. 1969; R.C.M. 1947, 84-209.

15-24-1206. County suit for delinquent privilege tax. A tax due and unpaid under 15-24-1203 through 15-24-1205 shall constitute a debt due the county for and on behalf of the various taxing units concerned in the tax. If the tax imposed by 15-24-1203 through 15-24-1205 or any portion thereof is not paid at the time the same becomes delinquent, the county auditor may issue a warrant in the name of the county directed to the clerk of the district court in his county, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in the appropriate columns, the amount of tax, penalties, interest, and other costs for which the warrant is issued and the date when such warrant is filed, and thereupon the warrant so docketed shall have the force and effect of a judgment duly rendered by a district court and docketed in the office of the clerk thereof and the county shall have the same remedies against the possessor user as any other judgment docket.

History: En. Sec. 4, Ch. 370, L. 1969; R.C.M. 1947, 84-210.

15-24-1207. Reporting requirements — rules. (1) Each private person who is a possessor or a beneficial user of tax-exempt property for industrial, trade, or other business purposes subject to tax pursuant to 15-24-1203 shall, on or before March 1 each year, file with the department of revenue a statement of the possession or other beneficial use of tax-exempt property in the preceding calendar year and the value of the property. The statement must be in the form prescribed by the department and must be verified by the possessor or beneficial user or, in the case of an association or corporation, by an officer of the association or corporation. The statement must include:

(a) the name and address of the person, association, or corporation;

(b) the location of the tax-exempt property; and

(c) the market value in dollars and cents of the tax-exempt property.

(2) The department may adopt any reasonable rules necessary to insure that the possessor or other beneficial user of tax-exempt property complies with the provisions of this part.

History: En. Sec. 1, Ch. 683, L. 1983; amd. Sec. 3, Ch. 104, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 104 in (1), near beginning of first sentence after "property", inserted "for industrial, trade, or other business purposes"; and made minor changes in style.

Cross-References

Centrally administered tax-exempt property, 15-23-111.

15-24-1208. Apportionment of tax-exempt property. (1) If property is owned in any manner by both a tax-exempt person or entity and a person or entity subject to taxation, the ownership interest of the person or entity subject to taxation in the property must be assessed, and that interest is taxable. The department of revenue shall assess the value of the taxable interest in the property by prorating the value of the property between the taxable interest and the nontaxable interest based on the ownership interests shown on the title to the property or any other document that evidences the ownership of the property. If there is no title to the property or other document that evidences the ownership interests or if the title or other document does not show the ownership interest, the value of the property must be prorated among the owners as if each owner owned equal interests in the property.

(2) If property is tax-exempt by virtue of its use, it loses its tax-exempt status when the tax-exempt use ends. If the property is used for both a tax-exempt use and a taxable use, the property is taxed based on the taxable use. The department shall assess the property based on the ratio of the taxable use to the total tax-exempt and taxable use during the preceding calendar year multiplied by the market value of the property.

History: En. Sec. 1, Ch. 90, L. 1993.

Part 13

Montana Economic Land Development Act (Repealed. Sec. 1, Ch. 48, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

15-24-1301. En. 84-7501 by Sec. 1, Ch. 549, L. 1975; R.C.M. 1947, 84-7501.

15-24-1302. En. 84-7502.1 by Sec. 1, Ch. 582, L. 1977; R.C.M. 1947, 84-7502.1.

15-24-1303. En. 84-7503.1 by Sec. 2, Ch. 582, L. 1977; R.C.M. 1947, 84-7503.1.

15-24-1304. En. 84-7504.1 by Sec. 3, Ch. 582, L. 1977; R.C.M. 1947, 84-7504.1; amd. Sec. 6, Ch. 274, L. 1981.

15-24-1305. En. 84-7505.1 by Sec. 4, Ch. 582, L. 1977; R.C.M. 1947, 84-7505.1.

15-24-1306. En. 84-7508.1 by Sec. 5, Ch. 582, L. 1977; R.C.M. 1947, 84-7508.1.

15-24-1307. En. 84-7509.1 by Sec. 6, Ch. 582, L. 1977; R.C.M. 1947, 84-7509.1.

15-24-1308. En. 84-7510.1 by Sec. 7, Ch. 582, L. 1977; R.C.M. 1947, 84-7510.1; amd. Sec. 24, Ch. 693, L. 1979.

15-24-1309. En. 84-7511.1 by Sec. 8, Ch. 582, L. 1977; R.C.M. 1947, 84-7511.1.

15-24-1310. En. 84-7512.1 by Sec. 9, Ch. 582, L. 1977; R.C.M. 1947, 84-7512.1.

15-24-1311. En. 84-7513.1 by Sec. 10, Ch. 582, L. 1977; R.C.M. 1947, 84-7513.1; amd. Sec. 25, Ch. 693, L. 1979.

15-24-1312. En. 84-7514.1 by Sec. 11, Ch. 582, L. 1977; R.C.M. 1947, 84-7514.1.

15-24-1313. En. 84-7516.1 by Sec. 13, Ch. 582, L. 1977; R.C.M. 1947, 84-7516.1.

15-24-1314. En. 84-7517.1 by Sec. 14, Ch. 582, L. 1977; R.C.M. 1947, 84-7517.1.

15-24-1315. En. 84-7518.1 by Sec. 15, Ch. 582, L. 1977; R.C.M. 1947, 84-7518.1.

15-24-1316. En. 84-7519.1 by Sec. 16, Ch. 582, L. 1977; R.C.M. 1947, 84-7519.1.

15-24-1317. En. 84-7515.1 by Sec. 12, Ch. 582, L. 1977; R.C.M. 1947, 84-7515.1.

15-24-1318. En. 84-7520.1 by Sec. 17, Ch. 582, L. 1977; R.C.M. 1947, 84-7520.1.

Part 14

New Industry — Real Property Improvements

15-24-1401. Definitions. The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, at least $50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry's gross sales or receipts are earned from outside the state; or

(e) earns 50% or more of its annual gross income from out-of-state sales.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, at least $125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1401 and 15-24-1402.

History: En. Sec. 2, Ch. 564, L. 1981; amd. Sec. 1, Ch. 574, L. 1987; amd. Sec. 2, Ch. 694, L. 1991.

15-24-1402. New or expanding industry — assessment — notification. (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, must be taxed at 50% of their taxable value. Each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(3) The taxpayer shall apply to the county assessor on a form provided by the department of revenue for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. In no case may the benefit described in subsection (1) apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, 20-9-360, or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit.

History: En. Sec. 3, Ch. 564, L. 1981; amd. Sec. 2, Ch. 574, L. 1987; amd. Sec. 3, Ch. 694, L. 1991; amd. Sec. 48, Ch. 767, L. 1991.

Part 15

Remodeling of Buildings or Structures

15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations. (1) Subject to the authority contained in subsection (4), remodeling, reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2 ½% as determined by the department of revenue or its agents, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2) through (4) and the following schedule. The percentages shall be applied as provided in subsections (3) and (4) and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) In order to confer the tax benefits described in subsection (1), the governing body of the affected county or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town must approve by resolution for each remodeling, reconstruction, or expansion project the use of the schedule provided for in subsection (1) or a schedule adopted pursuant to subsection (4).

(3) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. In no case may the benefit described in subsection (1) apply to statewide levies.

(4) A local government may, in the resolution required by subsection (2), modify the percentages contained in subsection (1) that apply to the first year following construction through the fourth year following construction. A local government may not modify the percentages contained in subsection (1) that apply to the fifth year following construction or years following the fifth year. A local government may not modify the time limits contained in subsection (1). The modifications to the percentages in subsection (1) adopted by a local government apply uniformly to each remodeling, reconstruction, or expansion project approved by the governing body.

History: En. Sec. 2, Ch. 599, L. 1981; amd. Sec. 1, Ch. 439, L. 1985; amd. Sec. 1, Ch. 695, L. 1989.

Part 16
Historic Properties

15-24-1601. Purpose. The purpose of this part is to provide legislation and guidance for the administration of a property tax abatement program for the restoration, rehabilitation, expansion, and new construction of certified residential and commercial properties located within national register historic districts and properties listed in the National Register of Historic Places. The abatement does not apply to the tax on personal property.

History: En. Sec. 1, Ch. 424, L. 1989.

15-24-1602. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the local review board as provided in 15-24-1605.

(2) "Certification" means approval by the board or state historic preservation office of a property's qualification for the property tax abatement under the terms of this part.

(3) "Contributing" means a building, site, structure, or object with historic architectural qualities, historic association, or archaeological value for which a property is significant because:

(a) it was present during a period of significant local or state history and possesses historic design or architectural integrity reflecting its character at that time or is capable of yielding important information about the period; or

(b) it independently meets the criteria for listing in the National Register of Historic Places.

(4) "Rehabilitation" means the process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those features of the property that are significant to its historical, architectural, and cultural values.

(5) "Restoration" means the process of accurately recovering the form, details, and setting of a property as it appeared when it was originally built or constructed by removing later work or replacing missing earlier work.

History: En. Sec. 2, Ch. 424, L. 1989.

15-24-1603. Historic property tax abatement — levy limitations. (1) A historic property undergoing rehabilitation, restoration, expansion, or new construction that meets criteria established by the review process described in 15-24-1605 or 15-24-1606 may receive a tax abatement during the construction period, not to exceed 12 months, and for up to 5 years following completion of the construction in accordance with subsections (2) and (3). The tax abatement is limited to 100% of the increase in taxable value caused by the rehabilitation, restoration, expansion, or new construction.

(2) In order to confer the tax benefits described in subsection (1), the governing body of the county or incorporated city or town where the improvement occurs shall establish by resolution the process for the use of the tax abatement provisions described in subsection (1).

(3) Property that receives a tax benefit under this part is not entitled to any other exemption or special valuation provided by Montana law during the period of the abatement.

(4) (a) The tax abatement applies only to the number of mills levied:

(i) for high school and elementary school district purposes; and

(ii) by the local governing body approving the abatement.

(b) The abatement may not apply to statewide levies.

History: En. Sec. 3, Ch. 424, L. 1989.

15-24-1604. Eligibility. A property that meets the design review criteria in 15-24-1605 is eligible for the property tax abatement if it is:

(1) located within the boundaries of a national register historic district and contributes to the district, as determined by the state historic preservation office;

(2) a newly constructed property within the boundaries of a national register historic district that meets design review criteria as being architecturally compatible with the historic district, as determined by the local review board or the state historic preservation office; or

(3) listed individually in the National Register of Historic Places.

History: En. Sec. 4, Ch. 424, L. 1989.

15-24-1605. Responsibilities of local governing bodies — local review board — design review process. (1) A local governing body that approves the tax benefit may designate a local review board to establish an application and review process to certify eligible properties. The review process must include design review criteria based on the secretary of the interior's standards for preservation projects or other standards approved by the state historic preservation office.

(2) The board shall include:

(a) at least three members with professional expertise in history, planning, archaeology, architectural history, historic archaeology, or another historic preservation-related discipline;

(b) at least one architect; and

(c) up to two members of the general public.

(3) The board shall determine whether a property is eligible under 15-24-1604 and is qualified for the tax abatement. The board shall approve or deny an application for the tax abatement and report its recommendation to the local governing body.

History: En. Sec. 5, Ch. 424, L. 1989.

15-24-1606. Responsibilities of the state historic preservation office. (1) If the local governing body approving the tax abatement does not appoint a board under the provisions of 15-24-1605, the state historic preservation office shall provide design review assistance and certification for qualifying properties.

(2) The state historic preservation office shall evaluate design review standards submitted to it for approval by the board.

History: En. Sec. 6, Ch. 424, L. 1989.

15-24-1607. Disqualification and penalty. (1) Following certification and during the period of tax abatement, a property that is altered in a way that adversely affects those elements that qualify it as historically contributing must be disqualified from receiving the tax abatement.

(2) If a historic property that has received a tax abatement under this part is disqualified, the owner is liable for back taxes, interest, and a penalty. These assessments must be extended against the property on the next general real

property tax roll, to be collected and distributed in the same manner as the currently assessed real property tax. The back taxes, interest, and penalty must equal the sum of the following:

(a) the difference in the total real property taxes due during the years the tax abatement was in effect and the total real property taxes which would have been due had the special assessment not been in effect for those years;

(b) interest on the amount calculated in subsection (2)(a) at the rate for delinquent property taxes provided for in 15-16-102; plus

(c) a penalty of 15% on the sum of subsections (2)(a) and (2)(b).

(3) Back taxes, interest, or penalty may not be imposed on a property transferred to an ownership that makes the property exempt from property taxation or if the property is destroyed by fire or an act of God.

History: En. Sec. 7, Ch. 424, L. 1989.

Part 17

Commercial and Other Property

15-24-1701. Suspension and cancellation of collection of certain property taxes on commercial property — subordination of county tax lien — local government discretion. (1) The governing body of a county or consolidated local government unit may suspend collection of delinquent property taxes on commercial property to facilitate the purchase and continued operation of a business utilizing the commercial property if the property has not been used in a business for 6 months immediately preceding the date of suspension.

(2) The governing body may refuse to suspend delinquent taxes if it determines that the purchase of the commercial property is not an arm's length transaction or if the purchase otherwise appears to be a restructuring of ownership for the primary purpose of escaping payment of delinquent property taxes or if the governing body determines the suspension is not in the best interest of the county.

(3) If the purchaser is obtaining financing as a part of a purchase agreement, the purchaser may request and the governing body may grant a subordination of the suspended tax lien to the financing. The request must include an operational plan, levels of employment, and other factors the governing body may consider important in determining if subordination of the county's tax lien position is in the best interest of the people of the county. Subordination does not diminish any other claims of tax lien as established by this section.

(4) If a purchaser of the commercial property continuously utilizes the property in a profit-oriented, employment-stimulating business for 3 years from the date of purchase, the governing body may cancel the collection of the suspended delinquent property taxes. The governing body may not cancel the suspended delinquent property taxes if the purchaser is delinquent on taxes for any other property within the governing body's taxing jurisdiction.

History: En. Sec. 11(1) thru (3), Ch. 631, L. 1989; amd. Sec. 11, Ch. 16, L. 1991; amd. Sec. 1, Ch. 77, L. 1991.

15-24-1702. *(Temporary)* **Resolution to suspend or cancel delinquent taxes.** (1) In order for the governing body to grant a suspension or cancellation of delinquent property taxes pursuant to this section, it shall adopt a resolution after:

(a) providing notice, as set forth in 7-1-2121;

(b) holding a public hearing; and

(c) notifying the governor's office of budget and program planning and the department of revenue about a proposed action to suspend or cancel delinquent property taxes. The governor's office of budget and program planning and the department of revenue shall consult with the governing body regarding the impact on programs that would result from the proposed granting of the suspension or cancellation of the delinquent property taxes, and the governing body shall consider the information before reaching a final decision.

(2) The resolution must state that the suspension or cancellation is in the best interest of the people of the county or consolidated local government, based on full disclosure of all pertinent financial information by the new owner under 15-24-1701 or by the owner or purchaser under 15-24-1704 as required by the local government. *(Terminates July 1, 1995—sec. 5, Ch. 422, L. 1995.)*

15-24-1702. *(Effective July 1, 1995)* **Resolution to suspend or cancel delinquent taxes.** (1) In order for the governing body to grant a suspension or cancellation of delinquent property taxes pursuant to this section, it shall adopt a resolution after:

(a) providing notice, as set forth in 7-1-2121;

(b) holding a public hearing; and

(c) notifying the governor's office of budget and program planning and the department of revenue about a proposed action to suspend or cancel delinquent property taxes. The governor's office of budget and program planning and the department of revenue shall consult with the governing body regarding the impact on programs that would result from the proposed granting of the suspension or cancellation of the delinquent property taxes, and the governing body shall consider the information before reaching a final decision.

(2) The resolution must state that the suspension or cancellation is in the best interest of the people of the county or consolidated local government, based on full disclosure of all pertinent financial information by the new owner as required by the local government.

History: En. Sec. 11(4), Ch. 631, L. 1989; amd. Sec. 2, Ch. 422, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 422 in (2), near end after "owner", inserted "under 15-24-1701 or by the owner or purchaser under 15-24-1704". Amendment effective April 20, 1993, and terminates July 1, 1995.

Effective Date — Retroactive Applicability: Section 4, Ch. 422, L. 1993, provided: "[This act] is effective on passage and approval [approved April 20, 1993] and applies retroactively to tax years beginning after December 31, 1987."

Termination: Section 5, Ch. 422, L. 1993, provided: "[This act] terminates July 1, 1995."

15-24-1703. Application of suspension or cancellation. The suspension or cancellation of delinquent property taxes pursuant to this part:

(1) applies to all mills levied in the county or otherwise required under state law, including levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, and 20-25-423;

(2) does not apply to assessments made against property for the payment of bonds issued pursuant to Title 7, chapter 12.

History: En. Sec. 11(5), Ch. 631, L. 1989.

15-24-1704. *(Temporary)* **Suspension and cancellation of collection of property taxes on commercial, agricultural, or residential property when statutory duty imposed.** (1) The governing body of a county or consolidated local government unit may suspend the collection of all or a part of the delinquent property taxes on commercial, agricultural, or residential property to facilitate the fulfillment of a statutory duty imposed with respect to the property to promote the viability of the property in commerce.

(2) The governing body may determine that:

(a) federal or state law imposed a duty, other than taxes or assessments, upon the property of the owner or a purchaser after the occurrence of the event;

(b) a material tax delinquency exists relative to the value of the property;

(c) the normal and reasonable cost of fulfilling the statutory duty when added to the delinquent taxes exceeds the fair market value of the property;

(d) the ownership history of the property demonstrates that there is no intent to restructure ownership for the purpose of escaping the payment of delinquent property taxes;

(e) the owner or purchaser has committed to fulfilling the statutory duty within a reasonable period of time;

(f) the cancellation of the delinquent taxes together with other financial facts concerning the property provide the owner or purchaser with a reasonable profit potential.

(3) If an owner or purchaser fulfills the statutory duty within a reasonable period of time, the governing body may cancel the collection of the delinquent property taxes. The governing body may not cancel the delinquent property taxes if the owner or purchaser is delinquent on taxes for any other property within the governing body's taxing jurisdiction. *(Terminates July 1, 1995—sec. 5, Ch. 422, L. 1993.)*

History: En. Sec. 1, Ch. 422, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 422, L. 1993, provided: "[This act] is effective on passage and approval [approved April 20, 1993] and applies retroactively to tax years beginning after December 31, 1987."

Termination: Section 5, Ch. 422, L. 1993, provided: "[This act] terminates July 1, 1995."

Part 18
Business Incubators

Part Cross-References

Development coordination, Title 90, ch. 1.

Montana Capital Company Act, Title 90, ch. 8.

15-24-1801. Definitions. Unless the context requires otherwise, the following definitions apply to 15-24-1802:

(1) "Business incubator" means a facility in which space is leased to new small businesses and that provides shared services and business assistance to the new businesses in order to improve their chances of success. The services provided may include but are not limited to receptionist, copying, computer, telephone, secretarial, and meeting services. The assistance

provided may include but is not limited to advice concerning marketing plans, business plans, accounting, and administration.

(2) "Local economic development organization" means a private nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

History: En. Sec. 1, Ch. 666, L. 1989.

15-24-1802. Business incubator tax exemption — procedure. (1) A business incubator owned or leased and operated by a local economic development organization is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the business incubator until all of the applicant's taxes have been paid in full or, if the property is leased to a business incubator, until all of the owner's property taxes on that property have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or leases and operates or will operate the business incubator.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

History: En. Sec. 2, Ch. 666, L. 1989; amd. Sec. 1, Ch. 669, L. 1991.

Part 19

Industrial Parks

15-24-1901. Definitions. Unless the context requires otherwise, the following definitions apply to this part:

(1) "Industrial park" means property zoned for light and heavy industry. The term includes fully developed or partially developed land and improvements and undeveloped land.

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

(3) "Port authority" means a port authority created under 7-14-1101 or 7-14-1102.

History: **En. Sec. 1, Ch. 679, L. 1989.**

15-24-1902. Industrial park tax exemption — procedure — termination. (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each industrial park in its respective jurisdiction. The governing body may not grant approval for the industrial park until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(5) If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

History: En. Sec. 2, Ch. 679, L. 1989; amd. Sec. 1, Ch. 702, L. 1991.

Part 20

Local Economic Development Organizations

15-24-2001. Definitions. Unless the context requires otherwise, the following definitions apply to this part:

(1) "Building and land" means commercial improvements and land sold or donated to a local economic development organization for subsequent sale or lease to a profit-oriented, employment-stimulating business. The term includes commercial property that has not been used in a business for 6 months immediately preceding the sale or donation of the building and land to the local economic development organization.

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

History: En. Sec. 1, Ch. 693, L. 1991.

15-24-2002. Building and land tax exemption — procedure — termination. (1) A building and land owned by a local economic development organization that the local economic development organization intends to sell or lease to a profit-oriented, employment-stimulating business are eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the affected county, consolidated government, incorporated city or town, or school district in which the building and land are located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). The governing body shall approve a tax exemption by a separate resolution. The governing body may not grant approval for the building and land until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation, as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or will own the building and land.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 and other levies required under state law.

(5) When a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

History: En. Sec. 2, Ch. 693, L. 1991; amd. Sec. 4, Ch. 693, L. 1991.

Parts 21 and 22 reserved

Part 23

Clean Coal Technology Projects

15-24-2301. Definitions. As used in 15-24-2302, the following definitions apply:

(1) "Clean coal technology project" means a project that uses coal as a method of generating energy, that is an effective and efficient method of coal energy generation, and that results in substantially reduced pollutant emissions compared to the commercial methods of coal energy generation in use at the time.

(2) "Department" means the department of natural resources and conservation established in 2-15-3301.

(3) "Local government" means a county, consolidated government, incorporated city or town, and school district.

History: En. Sec. 1, Ch. 722, L. 1991.

15-24-2302. Clean coal technology tax exemption — procedure — termination. (1) The buildings, facilities, or equipment installed under a clean coal technology project is eligible for an exemption from property taxes as provided in this section. A project must be designated as a clean coal technology project by the department under criteria contained in 90-4-905.

(2) In order to qualify for the tax exemption described in this section, the legislature must have approved the project and the governing body of each affected local government must have approved the tax exemption by resolution, after notice and hearing. The governing body of each affected local government must be notified in writing of the buildings, facilities, and equipment proposed to be exempt from taxation and the value of the buildings, facilities, and equipment. A tax exemption may not be granted under this section unless it is approved by every local government that would be affected by the project.

(3) If the governing body of each affected local government approves a resolution granting the tax exemption for a clean coal technology project, the buildings, facilities, or equipment installed under the project is exempt from the specified percentage of state and local property taxes as approved by the governing bodies. The percentage amount may be any amount up to 100%, but it must be the same for all state and local property taxes.

(4) Funds made available to a clean coal technology project as a result of the tax exemption under this section must be used for project development, construction, or operation or for payment of debt service on instruments used to fund project development, construction, or operation.

(5) The department shall, in writing, notify the department of revenue's agent in the county or counties in which the project is located of the date the final approval for the tax exemption of the property was granted under this section and shall specifically identify each piece of real or personal property subject to the tax exemption. A tax exemption granted under this section is effective for the life of the project or 25 years, whichever occurs first. The tax exemption begins on January 1 of the year after the department of revenue receives notification of the final approval under this section. The department shall, in writing, notify the department of revenue's agent in the county or counties in which the project is located when the exemption has expired. The termination of the exemption applies on January 1 of the taxable year following the expiration of the exemption.

History: En. Sec. 2, Ch. 722, L. 1991.

Part 24

Value-Added Manufacturing

15-24-2401. Purpose. The purpose of this part is to encourage value-added manufacturing in Montana by providing a taxable value decrease for a 7-year period for qualifying personal property of expanding industries that process Montana raw materials or use Montana semifinished products in manufacturing.

History: En. Sec. 1, Ch. 786, L. 1991.

15-24-2402. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Expansion" means that after December 31, 1991, the industry has added qualifying property within the jurisdiction either in the first tax year in which the taxable value decrease provided for in 15-24-2403 is to be received or in the preceding tax year. Expansion does not include property that:

(a) has qualified for the tax exemption under 15-24-1402; or

(b) will create an adverse impact on existing state, county, or municipal services.

(2) "Industry" is a firm that engages in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget and that engages in the:

(a) processing of Montana raw materials, such as minerals, ore, oil, gas, coal, agricultural products, and forestry products; or

(b) processing of semifinished products produced in Montana that are used by the industry as a raw material in further manufacturing.

(3) "Qualifying employee" means a person:

(a) whose job was created as a result of expansion; and

(b) whose position pays not less than three-quarters of the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry.

(4) "Qualifying property" means machinery and equipment that result in the hiring of qualifying employees used for the manufacture or processing of products described in subsection (2).

History: En. Sec. 2, Ch. 786, L. 1991.

15-24-2403. Expanding industry taxable value decrease — application — approval — reports. (1) After December 31, 1991, an existing industry with qualifying property that represents an expansion of the industry is entitled to receive a decrease in the tax rate for class eight property if the property results in the hiring of full-time qualifying employees for each year in which the taxable value decrease is in effect.

(2) A person, firm, or other group seeking to qualify its property for the taxable value decrease under subsection (1) shall apply to the department of revenue on a form provided by the department. The application must include:

(a) the description of the personal property that may qualify for the taxable value decrease;

(b) the date on which the qualifying property is intended to be operational;

(c) the rate of pay and number of existing employees and new employees to be used in the operation of the qualifying property;

(d) a statement that the new employees are in addition to the existing workforce of the industry and the specific responsibilities of each new employee; and

(e) a statement that all the applicant's taxes are paid in full.

(3) The department shall make an initial determination as to whether the industry qualifies for the taxable value decrease.

(4) (a) If the department determines that the property qualifies for a taxable value decrease, the governing body of the affected county, consolidated government, incorporated city or town, or school district shall give due notice as defined in 76-15-103 and hold a public hearing. Each governing body may either approve or disapprove the grant of taxable value decrease. A governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The resolution provided for in subsection (4)(a) must include the document that grants approval of the application that was submitted to the department by the taxpayer seeking the taxable value decrease.

(5) The tax reduction described in subsection (1) applies to:

(a) the number of mills levied and assessed by each governing body approving the benefit over which the governing body has sole discretion; and

(b) statewide levies if the governing body approving the tax reduction is a county, consolidated government, or incorporated city or town.

(6) The number of new employees used by the department to calculate the taxable value decrease in subsection (7) must be determined by the wages paid to qualifying employees. A qualifying employee paid the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry is considered one new employee.

Qualifying employees are considered equivalent new employees if they are paid three-quarters of the average wage or more. The qualifying employee is the equivalent of a new employee in the same fraction that his wages are to the average wage, but a qualifying employee may not be considered more than two new employees.

(7) (a) Qualifying property is entitled to a decrease in the taxable rate of class eight property based upon a percentage difference between a possible low rate of 3% and a high rate of the existing class eight property tax rate. The reduced taxable value rate is determined by calculating the inverse of the number of equivalent new employees divided by the number of existing employees and multiplying the product of that calculation by the decimal equivalent of the tax rate for class eight property.

(b) For each year that the taxable value decrease is in effect, the taxpayer shall report by March 1 to the department, on forms prescribed by the department, the wages of and the number of qualifying employees that are used in the operation of the qualifying property for which the taxable value decrease was granted.

History: En. Sec. 3, Ch. 786, L. 1991.

15-24-2404. Exclusion from other property tax reductions or exemptions. If a taxable value decrease is taken pursuant to this part, other property tax reductions or exemptions, including but not limited to those provided in 15-6-135, 15-24-1402, and 15-24-1501, are not allowed for the qualifying property.

History: En. Sec. 4, Ch. 786, L. 1991.

15-24-2405. Rules. The department of revenue shall prescribe rules necessary to carry out the purposes of this part.

History: En. Sec. 5, Ch. 786, L. 1991.

Part 25

Trucks and Truck Tractors

15-24-2501. *(Effective January 1, 1994)* **Tax levy on trucks and truck tractors over 26,000 pounds.** In addition to all other levies, including those under part 1, there is levied upon the taxable value of all trucks and truck tractors of 26,000 pounds or more licensed weight or gross vehicle weight 45 mills to offset the decrease in the amount of property tax caused by the exemption in 15-6-201(1)(v). The funds raised from the levy must be distributed in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

History: En. Sec. 8, Ch. 575, L. 1993.

Compiler's Comments

Effective Date: Section 24, Ch. 575, L. 1993, provided that this section is effective January 1, 1994.

CHAPTER 25

DANGEROUS DRUG TAX

Part 1 — General Provisions

15-25-101. Short title.
15-25-102. Definitions.
15-25-103 through 15-25-110 reserved.
15-25-111. Tax on dangerous drugs.
15-25-112. Exemptions.
15-25-113. Administration and enforcement — department rules.
15-25-114. Tax review.
15-25-115. Warrant for distraint — suspension of lien during incarceration.
15-25-116 through 15-25-120 reserved.
15-25-121. Accounts.
15-25-122. Disposition of proceeds.
15-25-123. Special revenue account.

Part 1

General Provisions

15-25-101. Short title. This chapter may be cited as the "Dangerous Drug Tax Act".

History: En. Sec. 1, Ch. 563, L. 1987.

15-25-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Dangerous drug" has the meaning provided in 50-32-101.

(2) "Department" means the department of revenue provided for in 2-15-1301.

(3) "Person" means an individual, firm, association, corporation, partnership, or any other group or combination acting as a unit.

History: En. Sec. 2, Ch. 563, L. 1987.

15-25-103 through 15-25-110 reserved.

15-25-111. Tax on dangerous drugs. (1) There is a tax on the possession and storage of dangerous drugs. Except as provided in 15-25-112, each person possessing or storing dangerous drugs is liable for the tax. The tax imposed is determined pursuant to subsection (2). The tax is due and payable on the date of assessment. The department shall add an administration fee of 5% of the tax imposed pursuant to subsection (2) to offset costs incurred in assessing value, in collecting the tax, and in any review and appeal process.

(2) With the exception that the tax on possession and storage of less than 1 ounce, 1 gram, or 100 micrograms of dangerous drugs must be that set forth below for 1 ounce, 1 gram, or 100 micrograms, the tax on possession and storage of dangerous drugs is the greater of:

(a) 10% of the assessed market value of the drugs, as determined by the department; or

(b) (i) $100 per ounce of marijuana, as defined in 50-32-101, or its derivatives, as determined by the aggregate weight of the substance seized;

(ii) $250 per ounce of hashish, as defined in 50-32-101, as determined by the aggregate weight of the substance seized;

(iii) $200 per gram of any substance containing or purported to contain any amount of a dangerous drug included in Schedule I pursuant to 50-32-222(1), (2), (4), and (5), or Schedule II pursuant to 50-32-224(1) through (4), as determined by the aggregate weight of the substance seized;

(iv) $10 per 100 micrograms of any substance containing or purported to contain any amount of lysergic acid diethylamide (LSD) included in Schedule I pursuant to 50-32-222(3), as determined by the aggregate weight of the substance seized;

(v) $100 per ounce of any substance containing or purported to contain any amount of an immediate precursor as defined under Schedule II pursuant to 50-32-224(5), as determined by the aggregate weight of the substance seized; and

(vi) $100 per gram of any substance containing or purported to contain any amount of dangerous drug not otherwise provided for in this subsection (2).

(3) The tax imposed under this section may be collected before any state or federal fines or forfeitures have been satisfied.

History: En. Sec. 3, Ch. 563, L. 1987; amd. Sec. 1, Ch. 421, L. 1989.

15-25-112. Exemptions. The tax imposed pursuant to 15-25-111 does not apply to any person authorized by state or federal law to possess or store dangerous drugs. The burden of proof of an exemption from 15-25-111 is on the person claiming it.

History: En. Sec. 4, Ch. 563, L. 1987.

15-25-113. Administration and enforcement — department rules. (1) All law enforcement personnel and peace officers shall promptly report each person subject to the tax to the department, together with such other information which the department may require, in a manner and on a form prescribed by the department.

(2) The deficiency assessment provisions of 15-53-105, the civil penalty and interest provisions of 15-53-111, the criminal penalty provisions of 15-30-321(3), the estimation of tax provisions of 15-53-112, and the statute of limitations provisions of 15-53-115 apply to this tax and are fully incorporated by reference in this chapter. The department may adopt such rules as are necessary to administer and enforce the tax.

History: En. Sec. 5, Ch. 563, L. 1987.

15-25-114. Tax review. A person aggrieved by an assessment pursuant to 15-25-111 or an exemption decision pursuant to 15-25-112 may seek a review of the assessment or exemption decision pursuant to 15-1-211.

History: En. Sec. 6, Ch. 563, L. 1987; amd. Sec. 7, Ch. 811, L. 1991.

15-25-115. Warrant for distraint — suspension of lien during incarceration. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded. The period during which the lien may be enforced is suspended during any period of incarceration of the person upon whom the tax is imposed.

History: En. Sec. 7, Ch. 563, L. 1987; amd. Sec. 2, Ch. 421, L. 1989.

15-25-116 through 15-25-120 reserved.

15-25-121. Accounts. (1) There is an evaluation special revenue account within the state treasury, for use by the department of family services. One-third of the taxes collected under 15-25-122 shall be deposited in the account.

(2) There is a chemical abuse assessment special revenue account within the state treasury, for use by the department of justice. One-third of the taxes collected under 15-25-122 shall be deposited in the account.

History: En. Sec. 8, Ch. 563, L. 1987; amd. Sec. 3, Ch. 421, L. 1989.

15-25-122. Disposition of proceeds. The department shall, in accordance with the provisions of 15-1-501(6), transfer all taxes collected pursuant to this chapter, less the administrative fee authorized in 15-25-111(1), as follows:

(1) one-third of the tax to the credit of the department of family services to be used for the youth evaluation program and chemical abuse aftercare programs; and

(2) the remaining two-thirds of the tax proceeds as follows:

(a) one-half to the department of justice to be used:

(i) for grants to youth courts to fund chemical abuse assessments; and

(ii) for grants to counties to fund services for the detention of juvenile offenders in facilities separate from adult jails, as authorized in 41-5-1002; and

(b) one-half to the account created by 44-12-206(3) if a state government law enforcement agency seized the drugs. If a local government law enforcement agency seized the drugs, then that amount must be credited to the treasurer or finance officer of the local government, be deposited in its general fund, and be used to enforce drug laws.

History: En. Sec. 9, Ch. 563, L. 1987; amd. Sec. 13, Ch. 83, L. 1989; amd. Sec. 4, Ch. 421, L. 1989; amd. Sec. 15, Ch. 799, L. 1991; amd. Sec. 3, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 near beginning of introductory clause, after "shall", inserted "in accordance with the provisions of 15-1-501(6)" and after "15-25-111(1)" deleted "to the state treasurer on a monthly basis"; at beginning of former (2) and (3) deleted requirements that State Treasurer deposit and credit tax proceeds; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Cross-References

State grants for youth detention services, Title 41, ch. 5, part 10.

15-25-123. Special revenue account. (1) There is created a special revenue account to be called the dangerous drug tax administration account.

(2) All administrative fees collected under 15-25-111(1) shall be deposited by the department into the dangerous drug tax administration account.

(3) The money in the dangerous drug tax administration account may be expended by the department to administer the tax and pay any refund required by this chapter.

(4) The appropriation made in subsection (3) is a statutory appropriation as provided in 17-7-502.

History: En. Sec. 10, Ch. 563, L. 1987; amd. Sec. 14, Ch. 83, L. 1989.

CHAPTERS 26 THROUGH 29

RESERVED

CHAPTER 30

INDIVIDUAL INCOME TAX

Part 1 — Rate and Return of Tax

15-30-101. Definitions.
15-30-102. Construction of net income.
15-30-103. Rate of tax — adjustment.
15-30-104. Repealed.
15-30-105. Tax on nonresident — alternative tax based on gross sales.
15-30-106. Tax on lump-sum distributions.
15-30-107. Taxable liability on termination of independent liability fund.
15-30-108. Terminated.
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15-30-110. Exemption for gain on sale or exchange of certain capital assets.
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Chapter Cross-References

Reservation of power to tax certain persons and property within land purchased by the United States under Art. I, sec. 8, part 17, U.S. Const.; 2-1-202.

Reservation of power to tax certain persons and property within Glacier National Park, 2-1-205.

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Capital gains or dividend income exempt — investment in small business investment company, Title 15, ch. 33, part 1.

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Income tax deduction for land sale to beginning farmers, 80-12-211.

Tax-exempt agricultural loan authority bonds, 80-12-305.

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

Part 1

Rate and Return of Tax

15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6);

(b) the standard deduction provided in 15-30-122, but unadjusted by subsection (4) of 15-30-122.

(2) "Consumer price index" means the consumer price index for all urban consumers, United States city average, for all items, using the 1982-1984 base index of 100, as that base index is periodically adjusted, as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June 1993, then subtracting 1, then multiplying by 0.5, then adding 1.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(14) "Purposely" is as defined in 45-2-101.

(15) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(16) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(17) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(18) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(19) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

(20) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations.

History: En. Sec. 1, Ch. 181, L. 1933; re-en. Sec. 2295.1, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959; amd. Sec. 1, Ch. 62, L. 1967; amd. Sec. 157, Ch. 516, L. 1973; R.C.M. 1947, 84-4901; amd. Sec. 1, Ch. 476, L. 1979; amd. Sec. 1, Ch. 648, L. 1979; amd. Sec. 1, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 548, L. 1981; amd. Sec. 1, Ch. 289, L. 1989; amd. Sec. 1, Ch. 823, L. 1991; amd. Sec. 1, Ch. 14, Sp. L. July 1992; amd. Sec. 26, Ch. 10, L. 1993; amd. Sec. 1, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 10 in definition of taxable year inserted "or tax year"; separated definition of stock dividends from definition of dividend; and made minor changes in style.

Chapter 634 in definition of base year structure deleted former (a) that read: "the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year", in (a), at end, deleted "in effect on June 30 of the taxable year", and in (b), before "standard", deleted "maximum", substituted "subsection (4)" for "subsection (2)", and at end deleted "in effect on June 30 of the taxable year"; near beginning of definition of consumer price index, after "index", inserted "for all urban consumers" and substituted "1982-1984 base index of 100, as that base index is periodically adjusted" for "1967 base of 100"; at end of definition of inflation factor substituted "June 1993, then subtracting 1, then multiplying by 0.5, then adding 1" for "June, 1980"; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Cross-References

Business inventory credit, 15-6-136 (compiler's comments).

15-30-102. Construction of net income. For the purpose of raising revenue, the net income required to be shown on returns under this chapter and taken as the basis for determining the tax hereunder shall not be classified or held or construed to be property. All income except what has been expressly exempted under the provisions of this chapter and income not permitted to be taxed under the constitution of this state or the constitution or laws of the United States shall be included and considered in determining the net income of taxpayers within the provision of this chapter.

History: En. Sec. 31, Ch. 181, L. 1933; re-en. Sec. 2295.31, R.C.M. 1935; R.C.M. 1947, 84-4932.

Cross-References

Tax-deferred annuity program for teachers, 19-20-208.

Deferred income of public employee not subject to taxation until distribution, 19-50-103.

Payments received under Title 70, ch. 31, for relocation caused by federally assisted programs not income, 70-31-106.

15-30-103. Rate of tax — adjustment. (1) Subject to subsection (2), there is levied, collected, and paid for each taxable year commencing on or after December 31, 1992, upon the taxable income of every individual subject to this tax, after making allowance for exemptions and deductions, a tax at the rate of 6.7% of the individual's taxable income.

(2) (a) The department shall, pursuant to subsection (2)(b), adjust the tax rate provided in subsection (1) to reflect changes in federal adjusted gross income. The adjustment must maintain a rate that produces revenue that does not exceed 6.7% of taxable income based upon the definition of federal adjusted gross income as provided in 26 U.S.C. 62 on January 1, 1993. Prior to adopting a change in rate, the department shall present the proposed change to the revenue oversight committee for review by the committee.

(b) (i) For purposes of subsection (2)(a), for tax year 1994 and each tax year thereafter, the department shall in the succeeding year determine the change in the amount of revenue collected resulting from changes made by the United States congress to federal adjusted gross income, as defined by the Internal Revenue Code, effective for that year.

(ii) Based on the determination in subsection (2)(b)(i), the tax rate for the tax year following the determination must be adjusted in increments of 0.1%.

(iii) A change in the rate may not be made unless the amount of change exceeds $4.5 million.

History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; re-en. Sec. 2295.2, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965; amd. Sec. 1, Ch. 5, Ex. L. 1967; amd. Sec. 1, Ch. 10, Ex. L. 1969; R.C.M. 1947, 84-4902; amd. Sec. 2, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 2, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 at beginning of (1) inserted "Subject to subsection (2)", after "December 31" substituted "1992" for "-1968", near middle substituted "individual" for "taxpayer", and at end substituted "a tax at the rate of 6.7% of the individual's taxable income" for "on the following brackets of taxable income as adjusted under subsection (2) at the following rates:

(a) on the first $1,000 of taxable income or any part thereof, 2%;

(b) on the next $1,000 of taxable income or any part thereof, 3%;

(c) on the next $2,000 of taxable income or any part thereof, 4%;

(d) on the next $2,000 of taxable income or any part thereof, 5%;

(e) on the next $2,000 of taxable income or any part thereof, 6%;

(f) on the next $2,000 of taxable income or any part thereof, 7%;

(g) on the next $4,000 of taxable income or any part thereof, 8%;

(h) on the next $6,000 of taxable income or any part thereof, 9%;

(i) on the next $15,000 of taxable income or any part thereof, 10%;

(j) on any taxable income in excess of $35,000 or any part thereof, 11%"; substituted (2) concerning adjusting the tax rate to reflect changes in federal adjusted gross income to maintain a rate that produces revenue that does not exceed 6.7% of taxable income for "By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that taxable year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that taxable year and shall be used as the basis for the imposition of the tax in subsection (1) of this section"; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Cross-References

Credit for foreign taxes, 15-30-124.

Investment credit, 15-30-162.

Alternative energy system credit, 15-32-201.

Credit for public contractor's license fee, 15-50-207.

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

15-30-104. Repealed. Sec. 3, Ch. 422, L. 1981.

History: En. Sec. 2, Ch. 10, Ex. L. 1969; amd. Sec. 40, Ch. 9, 2nd Ex. L. 1971; R.C.M. 1947, 84-4902.1(part).

15-30-105. Tax on nonresident — alternative tax based on gross sales. (1) A like tax is imposed upon every person not resident of this state, which tax must be levied, collected, and paid annually at the rate specified in 15-30-103 with respect to the person's taxable income.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year must be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact.

History: En. Sec. 3, Ch. 181, L. 1933; re-en. Sec. 2295.3, R.C.M. 1935; amd. Sec. 2, Ch. 253, L. 1959; amd. Sec. 1, Ch. 199, L. 1963; amd. Sec. 1, Ch. 15, L. 1971; R.C.M. 1947, 84-4903; amd. Sec. 1, Ch. 422, L. 1981; amd. Sec. 2, Ch. 14, Sp. L. July 1992; amd. Sec. 3, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 in first sentence in (1) substituted "rate specified" for "rates specified" and at end substituted "taxable income" for "net income" and deleted second and third sentences providing that after calculating the tax imposed, the tax due and payable is based on the ratio of income earned in Montana to total income and providing that interest income from installment sales of real or tangible commercial or business property located in the state is considered income earned in Montana; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

15-30-106. Tax on lump-sum distributions. (1) There is imposed a separate tax on lump-sum distributions.

(2) The tax is 10% of the amount of tax determined under section 402(e) of the Internal Revenue Code of 1954, as amended, or as section 402(e) may be renumbered or amended.

(3) All means available for the administration and enforcement of income taxes shall be applied to the tax on lump-sum distributions.

History: En. Sec. 1, Ch. 380, L. 1983.

15-30-107. Taxable liability on termination of independent liability fund. If an independent liability fund established pursuant to Title 33, chapter 27, is terminated as provided in 33-27-119, the income from the principal distributed pursuant to 33-27-119(2) is taxable to that person or persons under the applicable provisions of this chapter.

History: En. Sec. 18, Ch. 564, L. 1987.

15-30-108. Terminated. Sec. 102, Ch. 11, Sp. L. June 1989.

History: En. Sec. 6, Ch. 666, L. 1987; En. Sec. 65, Ch. 11, Sp. L. June 1989.

15-30-109 reserved.

15-30-110. Exemption for gain on sale or exchange of certain capital assets. Notwithstanding the provisions of 15-30-111, adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

History: En. Sec. 7, Ch. 666, L. 1987.

15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition includes the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(c) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, and service charges received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging. For the purposes of this subsection (f), "service charge" means an arbitrary fixed charge added to the customer's bill by the person's employer in lieu of a tip. It is collected by the employer and paid to the person by the employer.

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange"; and

(j) except as provided in subsection (7), for a single joint return of husband and wife, an amount, not to exceed $3,000, equal to 10% of the earned income received by the spouse that earned the lesser amount of earned income in the tax year.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1

railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) The amount specified in subsection (2)(j) is reduced by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000. *(Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)*

History: En. Sec. 5, Ch. 181, L. 1933; re-en. Sec. 2295.5, R.C.M. 1935; amd. Sec. 1, Ch. 167, L. 1947; amd. Sec. 1, Ch. 260, L. 1955; amd. Sec. 1, Ch. 58, L. 1963; amd. Sec. 1, Ch. 129, L. 1965; amd. Sec. 1, Ch. 236, L. 1971; amd. Sec. 1, Ch. 345, L. 1971; amd. Sec. 1, Ch. 158, L. 1975; amd. Sec. 1, Ch. 411, L. 1975; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 84-4905; amd. Sec. 1, Ch. 483, L. 1981; amd. Sec. 2, Ch. 537, L. 1981; amd. Sec. 1, Ch. 546, L. 1981; amd. Sec. 1, Ch. 550, L. 1981; amd. Sec. 1, Ch. 13, L. 1983; amd. Sec. 1, Ch. 634, L. 1983; amd. Sec. 1, Ch. 198, L. 1985; amd. Sec. 1, Ch. 364, L. 1985; amd. Sec. 1, Ch. 464, L. 1985; amd. Sec. 1, Ch. 682, L. 1985; amd. Sec. 48, Ch. 370, L. 1987; amd. Sec. 10, Ch. 494, L. 1987; amd. Sec. 1, Ch. 657, L. 1987; amd. Sec. 1, Ch. 532, L. 1989; amd. Sec. 3, Ch. 617, L. 1989; amd. Sec. 1, Ch. 807, L. 1991; amd. Sec. 2, Ch. 823, L. 1991; amd. Sec. 4, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 deleted former (1)(b) that included refunds received of federal income tax to the extent the deduction resulted in a reduction of Montana income tax liability; in (2)(f), after "January 1, 1983", inserted "and service charges" and inserted second and third sentences defining service charge; inserted (2)(j) that read: "(j) except as provided in subsection (7), for a single joint return of husband and wife, an amount, not to exceed $3,000, equal to 10% of the earned income received by the spouse that earned the lesser amount of earned income in the tax year"; inserted (7) that provided that the amount specified in subsection (2)(j) is reduced by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Conditional Grandfather Clause for Certain Montana Shareholders of Foreign Corporations That Have Elected Subchapter S. Corporation Status for Federal Tax Purposes: Section 11, Ch. 807, L. 1991, provided: "A Montana taxpayer who is a shareholder in a corporation that is not doing business in Montana and that has elected subchapter S. corporation status for federal tax purposes may apply 15-30-111(3) as it read in 1989 for all tax years beginning on or before December 31, 1996, if the following conditions are met:

(1) The taxpayer can establish by substantial, credible evidence that the department of revenue gave the taxpayer advice concerning the application of 15-30-111(3) to the taxpayer's facts and circumstances.

(2) The taxpayer can establish by substantial, credible evidence that he relied on that advice to his detriment."

Contingent Termination: Section 3, Ch. 634, L. 1983, provided: "This act terminates if congress passes and the president approves legislation that removes the provision in section 6053(c)(3) of the Internal Revenue Code of 1954 that requires an employee allocation for tax purposes of 8% of gross receipts of the business for which the employee works. If this act terminates, it does so on the date of the final approval of the congressional legislation."

Cross-References

Exemption of bonds financing county-operated hospitals and nursing homes, 7-34-2416.

Income from electing small business corporations, 15-31-202.

Deduction allowed for capital investment in a building for an energy conservation purpose, 15-32-103.

Tax-deferred annuity program for teachers, 19-20-207.

Deferred income of public employee not subject to taxation until distribution, 19-50-103.

Railroad rehabilitation revenue bonds exemption, 60-11-1110.

Rolling stock revenue bonds exemption, 60-11-1210.

Exemption of airport bonds, 67-11-303.

Payment received under Title 70, ch. 31, for relocation caused by federally assisted programs not income, 70-31-106.

Income tax deduction for income from land sale to beginning farmers, 80-12-211.

Exemption of bonds issued by conservancy district, 85-9-626.

Exemption of bonds issued by Board of Housing, 90-6-125.

Montana Health Facility Authority obligations — tax exemption, 90-7-112.

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

15-30-112. Exemptions. (1) Except as provided in subsection (6), in the case of an individual, the exemptions provided by subsections (2) through (5) are allowed as deductions in computing taxable income.

(2) (a) An exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the taxpayer.

(b) An additional exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's taxable year.

(b) An additional exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of the taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the taxpayer if the taxpayer is blind at the close of the taxpayer's taxable year.

(b) An additional exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (b), the determination of whether the spouse is blind must be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during the taxable year, the determination must be made as of the time of death.

(c) For purposes of this subsection (4), an individual is blind only if the individual's central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if the individual's visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $2,710; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) An exemption is not allowed under this subsection (5) for any dependent who has made a joint return with the dependent's spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (ii), the term "educational institution" means only an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) (a) The exemptions provided for in this section are reduced by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000.

(b) For tax years beginning after December 31, 1993, the department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that taxable year and must be used in calculating the tax imposed in 15-30-103.

History: En. Sec. 10, Ch. 181, L. 1933; re-en. Sec. 2295.10, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974; R.C.M. 1947, 84-4910(a) thru (e), (i); amd. Sec. 8, Ch. 698, L. 1979; amd. Sec. 3, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 2, Ch. 548, L. 1981; amd. Sec. 3, Ch. 14, Sp. L. July 1992; amd. Sec. 5, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 throughout section substituted "$2,710" for "$800" and substituted "1992" for "1978"; inserted (6)(a) reducing exemptions provided in this section by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000; at beginning of (6)(b) inserted "For tax years beginning after December 31, 1993"; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Cross-References

Information regarding blindness exemption furnished to Department of Justice, 15-30-303.

Capital gains or dividend income exempt — investment in small business investment company, Title 15, ch. 33, part 1.

15-30-113. General definition of dependent. (1) For purposes of 15-30-112, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

(a) a son or daughter of the taxpayer or a descendant of either;

(b) a stepson or stepdaughter of the taxpayer;

(c) a brother, sister, stepbrother, or stepsister of the taxpayer;

(d) the father or mother of the taxpayer or an ancestor of either;

(e) a stepfather or stepmother of the taxpayer;

(f) a son or daughter of a brother or sister of the taxpayer;

(g) a brother or sister of the father or mother of the taxpayer;

(h) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer;

(i) an individual who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household; or

(j) an individual who:

(i) is a descendant of a brother or sister of the father or mother of the taxpayer;

(ii) for the taxable year of the taxpayer received institutional care required by reason of a physical or mental disability; and

(iii) before receiving such institutional care, was a member of the same household as the taxpayer.

(2) For purposes of 15-30-112 and this section:

(a) the terms "brother" and "sister" include a brother or sister by the half blood;

(b) in determining whether any of the relationships specified in this section exist, a legally adopted child of an individual shall be treated as a child of such individual by blood.

History: En. Sec. 10, Ch. 181, L. 1933; re-en. Sec. 2295.10, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974; R.C.M. 1947, 84-4910(f), (g).

15-30-114. Additional exemption for dependent child with handicap. (1) In lieu of the exemption in 15-30-112(5), an exemption for twice the amount allowed for dependents shall be allowed for taxable years beginning after December 31, 1976, for each dependent child with a handicap.

(2) In order to be eligible for the exemption, a dependent child with a handicap must, for the taxable year of the taxpayer, have as his principal place of abode the home of the taxpayer and have a permanent handicap of great enough severity that it constitutes not less than 50% disability to the body as a whole. An exemption may be allowed for a dependent with a permanent handicap after he reaches the age of majority if he continues to be a dependent.

History: En. 84-4910.1 by Sec. 1, Ch. 500, L. 1977; R.C.M. 1947, 84-4910.1; amd. Sec. 10, Ch. 698, L. 1979.

15-30-115. Physician's verification of handicap required. A taxpayer claiming the exemption provided for in 15-30-114 must provide with his income tax statement written documentation by a licensed physician that the handicap qualifies under that section.

History: En. 84-4910.2 by Sec. 2, Ch. 500, L. 1977; R.C.M. 1947, 84-4910.2.

15-30-116. Veterans' bonus or military salary — exemptions. (1) All payments made under the World War I bonus law, Korean bonus law, and the veterans' bonus law are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

History: (1)En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957; amd. Sec. 1, Ch. 4, L. 1965; amd. Sec. 169, Ch. 516, L. 1973; Sec. 84-4907.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 326, L. 1975; Sec. 84-4907.2, R.C.M. 1947; R.C.M. 1947, 84-4907.1, 84-4907.2.

Cross-References

Special consideration allowed service personnel and veterans, Art. II, sec. 35, Mont. Const.

15-30-117. Net operating loss — computation. (1) A Montana net operating loss for a loss incurred in tax years beginning after December 31, 1992, must be determined in accordance with section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in accordance with the following:

(a) The net operating loss deduction for Montana purposes is increased by Montana wages and salaries allowed as a business deduction under 15-30-111(4).

(b) The net operating loss deduction for Montana purposes is decreased by the interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a).

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, a net operating loss does not include income defined as exempt from state taxation under 15-30-111(2).

History: En. Sec. 1, Ch. 142, L. 1985; amd. Sec. 15, Ch. 83, L. 1989; amd. Sec. 1, Ch. 20, L. 1991; amd. Sec. 2, Ch. 807, L. 1991; amd. Sec. 6, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 near beginning of (1), after "net operating loss", inserted "for a loss incurred in tax years beginning after December 31, 1992"; in (1)(a), after "increased by", deleted "the following"; deleted (1)(a)(i) that read: "(i) that portion of the federal income tax and motor vehicle tax allowed as a deduction under 15-30-121 or 15-30-131 which is attributable to income from a Montana trade or business"; in (1)(b), after "decreased by the", deleted "following"; deleted (1)(b)(ii) through (1)(b)(iv) that read: "(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as Montana business income;

(iii) state income tax; and

(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income"; deleted (2)(b) that included a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Cross-References

Corporation license tax — deductions allowed in computing income, 15-31-114.

15-30-118 through 15-30-120 reserved.

15-30-121. Repealed. Sec. 22, Ch. 634, L. 1993.

History: En. Sec. 6, Ch. 181, L. 1933; re-en. Sec. 2295.6, R.C.M. 1935; amd. Sec. 2, Ch. 167, L. 1947; amd. Sec. 2, Ch. 260, L. 1955; amd. Sec. 1, Ch. 102, L. 1977; amd. Sec. 2, Ch. 574, L. 1977; amd. Sec. 5, Ch. 576, L. 1977; R.C.M. 1947, 84-4906; amd. Sec. 1, Ch. 90, L. 1979; amd. Sec. 1, Ch. 129, L. 1979; amd. Sec. 3, Ch. 480, L. 1981; amd. Sec. 4, Ch. 533, L. 1981; amd. Sec. 20, Ch. 614, L. 1981; amd. Sec. 1, Ch. 118, L. 1983; amd. Sec. 10, Ch. 516, L. 1985; amd. Sec. 8, Ch. 610, L. 1985; amd. Sec. 1, Ch. 613, L. 1985; amd. Sec. 1, Ch. 501, L. 1987; amd. Sec. 11, Ch. 611, L. 1987; amd. Sec. 1, Ch. 613, L. 1991; amd. Sec. 2, Ch. 670, L. 1991; amd. Sec. 6, Ch. 808, L. 1991.

15-30-122. Standard deduction. (1) A standard deduction of adjusted gross income is allowed on the taxpayer's return.

(2) (a) Except as provided in subsections (2)(b) through (2)(e), the standard deduction is 40% of Montana adjusted gross income, but not more than $5,000.

(b) For a single joint return of husband and wife, the standard deduction is 40% of Montana adjusted gross income, but not more than $10,000.

(c) For a single individual who qualifies to file as a head of household on the individual's federal income tax return, the standard deduction is 40% of Montana adjusted gross income, but not more than $7,500.

(d) The standard deduction for married taxpayers filing separately is 40% of Montana adjusted gross income, but not more than $5,000.

(e) The standard deductions provided for in this subsection (2) are reduced by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000.

(3) For purposes of this section, the determination of whether an individual is married must be made as of the last day of the taxable year. However, if one of the spouses dies during the taxable year, the determination must be made as of the date of death.

(4) For taxable years beginning after December 31, 1993, by November 1 of each year, the department shall multiply the standard deduction for single returns, qualified-head-of-household returns, and joint returns by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted deductions are effective for that taxable year and must be used in calculating the tax imposed in 15-30-103.

History: En. Sec. 8, Ch. 181, L. 1933; re-en. Sec. 2295.8, R.C.M. 1935; amd. Sec. 1, Ch. 207, L. 1949; amd. Sec. 1, Ch. 187, L. 1953; amd. Sec. 4, Ch. 260, L. 1955; amd. Sec. 1, Ch. 202, L. 1969; amd. Sec. Ch. 357, L. 1971; R.C.M. 1947, 84-4908; amd. Sec. 11, Ch. 698, L. 1979; amd. Sec. 4, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 516, L. 1981; amd. Sec. 1, Ch. 501, L. 1983; amd. Sec. 1, Ch. 30, L. 1985; amd. Sec. 4, Ch. 14, Sp. L. July 1992; amd. Sec. 7, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 substituted (1) and (2) that read: "(1) A standard deduction of adjusted gross income is allowed on the taxpayer's return.

(2) (a) Except as provided in subsections (2)(b) through (2)(e), the standard deduction is 40% of Montana adjusted gross income, but not more than $5,000.

(b) For a single joint return of husband and wife, the standard deduction is 40% of Montana adjusted gross income, but not more than $10,000.

(c) For a single individual who qualifies to file as a head of household on the individual's federal income tax return, the standard deduction is 40% of Montana adjusted gross income, but not more than $7,500.

(d) The standard deduction for married taxpayers filing separately is 40% of Montana adjusted gross income, but not more than $5,000.

(e) The standard deductions provided for in this subsection (2) are reduced by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000" for former language that read: "A standard deduction equal to 20% of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,500, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on his federal income tax return, the maximum standard deduction shall be $3,000, as adjusted under the provisions of subsection (2). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction"; at beginning of first sentence of (4) inserted "For taxable years beginning after December 31, 1993", before "standard deduction" deleted "maximum", and after "single returns" inserted "qualified-head-of-household returns, and joint returns" and deleted former second sentence that read: "The standard deduction for joint returns and qualified-head-of-household returns shall be twice the amount for single returns"; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-30-123. Nondeductible items in computing net income. In computing net income, no deductions shall in any case be allowed in respect of:

(1) personal, living, or family expenses;

(2) any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or

(4) premiums paid on any life insurance policy covering the life of any officer or employee or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under such policy.

History: En. Sec. 9, Ch. 181, L. 1933; re-en. Sec. 2295.9, R.C.M. 1935; R.C.M. 1947, 84-4909.

15-30-124. Credit allowed resident taxpayers for income taxes imposed by foreign states. Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this chapter for income taxes imposed by and paid to another state or country on income taxable under this chapter:

(1) The credit shall be allowed only for taxes paid to such other state on income derived from sources within such state which is taxable under the laws of such state or country irrespective of the residence or domicile of the recipient.

(2) The credit shall not be allowed if such other state or country allows residents of this state a credit against the taxes imposed by such state for taxes paid or payable under this chapter.

(3) The allowable credit shall be computed by formula to be prescribed by the department.

History: En. Sec. 2, Ch. 28, L. 1941; amd. Sec. 7, Ch. 253, L. 1959; amd. Sec. 181, Ch. 516, L. 1973; R.C.M. 1947, 84-4937.

15-30-125. Credit for energy-conserving investments. There is a credit against tax liability under this chapter as provided in 15-32-109.

History: En. Sec. 2, Ch. 480, L. 1981.

15-30-126. Small business corporation — deduction for donation of computer equipment to schools. A small business corporation, as defined in 15-31-201, is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(2) the property is not transferred by the donee in exchange for money, other property, or services; and

(3) the electing small business corporation receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2).

History: En. Sec. 2, Ch. 447, L. 1983; amd. Sec. 3, Ch. 807, L. 1991; amd. Sec. 9, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 deleted (4) that read: "(4) the deduction allowed in this section is in lieu of the deduction allowed under 15-30-121 for charitable contributions"; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-30-127. Tax deductibility. (1) The amount of contributions made by a small business to its independent liability fund as defined in 33-27-103 is deductible to that small business on its Montana individual income tax return for the taxable year in which the contributions are made to the fund.

(2) Administrative costs under 33-27-117(1), except those paid from the principal of an independent liability fund, are deductible on Montana individual income tax returns for the fiscal year in which they are paid or accrued.

(3) Income on the money, assets, and investments in an independent liability fund as defined in 33-27-103 may be contributed to the fund. If it is not so contributed, it is taxable in accordance with the applicable provisions of this chapter.

History: En. Secs. 9, 11, 14, Ch. 564, L. 1987.

15-30-128. Credit for expense of caring for certain elderly family members. (1) There is a credit against the tax imposed by this chapter for qualified elderly care expenses paid by an individual for the care of a qualifying family member during the taxable year.

(2) A qualifying family member is an individual who:

(a) is related to the taxpayer by blood or marriage;

(b) (i) is at least 65 years of age; or

(ii) has been determined to be disabled by the social security administration; and

(c) has a family income of $15,000 or less for an unmarried individual and $30,000 or less for a married individual for the taxable year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the gross income, including all nontaxable income, of the individual or, in the case of a married individual, the gross income, including all nontaxable income, of the individual and the individual's spouse.

(4) Qualified elderly care expenses include:

(a) payments by the taxpayer for home health agency services, personal care attendant services and care in a long-term health care facility, as defined in 50-5-101, that is licensed by the department of health and environmental sciences, homemaker services, adult day care, respite care, or health care equipment and supplies:

(i) provided to the qualifying family member;

(ii) provided by an organization or individual not related to the taxpayer or the qualifying family member; and

(iii) not compensated for by insurance or otherwise;

(b) premiums paid for long-term care insurance coverage for a qualifying family member.

(5) The percentage amount of credit allowable under this section is:

(a) for a taxpayer whose adjusted gross income does not exceed $25,000, 30% of qualified elderly care expenses; or

(b) for a taxpayer whose adjusted gross income exceeds $25,000, the greater of:

(i) 20% of qualified elderly care expenses; or

(ii) 30% of qualified elderly care expenses, less 1% for each $2,000 or fraction thereof by which the adjusted gross income of the taxpayer for the taxable year exceeds $25,000.

(6) The dollar amount of credit allowable under this section is:

(a) reduced by $1 for each dollar of the adjusted gross income over $50,000 for a taxpayer whose adjusted gross income exceeds $50,000;

(b) limited to $5,000 per qualifying family member in a taxable year and to $10,000 total for two or more family members in a taxable year;

(c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified elderly care expenses paid by those taxpayers for that qualified family member.

(7) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a

carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

(8) In the case of a married individual filing a separate return, the percentage amount of credit under subsection (5) and the dollar amount of credit under subsection (6) are limited to one-half of the figures indicated in those subsections.

History: En. Sec. 1, Ch. 469, L. 1989; amd. Sec. 1, Ch. 670, L. 1991.

15-30-129. Tax credit for providing disability insurance for employees. There is a credit against the taxes otherwise due under this chapter allowable to an employer for the amount of premiums for disability insurance paid by the employer for his employees. The tax credit must be computed in accordance with the provisions of 15-31-132.

History: En. Sec. 7, Ch. 606, L. 1991.

15-30-130 reserved.

15-30-131. Nonresident and part-year resident taxpayers — adjusted gross income. (1) In the case of a nonresident or part-year resident taxpayer, adjusted gross income includes the entire amount of adjusted gross income from sources within this state but does not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations, except to the extent to which the income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations are a part of income from any business, trade, profession, or occupation carried on in this state. Interest income from installment sales of real or tangible commercial or business property located in Montana must be included in Montana adjusted gross income. Adjusted gross income from sources within and outside of this state must be allocated and apportioned under rules adopted by the department in accordance with the Multistate Tax Compact.

(2) For purposes of this section, "installment sales" means sales in which the buyer agrees to pay the seller in one or more deferred installments.

(3) The deductions allowed in computing net income are restricted to a prorated standard deduction, as adjusted, allowed under 15-30-122 and prorated exemptions, as adjusted, allowed under 15-30-112. The standard deduction and the claimable exemptions must be prorated according to the ratio that the taxpayer's Montana adjusted gross income bears to the taxpayer's federal adjusted gross income.

History: En. Sec. 7, Ch. 181, L. 1933; re-en. Sec. 2295.7, R.C.M. 1935; amd. Sec. 1, Ch. 28, L. 1937; amd. Sec. 1, Ch. 7, L. 1939; amd. Sec. 1, Ch. 63, L. 1949; amd. Sec. 1, Ch. 17, L. 1951; amd. Sec. 1, Ch. 111, L. 1953; amd. Sec. 3, Ch. 260, L. 1955; amd. Sec. 1, Ch. 237, L. 1963; amd. Sec. 1, Ch. 270, L. 1965; amd. Sec. 168, Ch. 516, L. 1973; R.C.M. 1947, 84-4907; amd. Sec. 1, Ch. 623, L. 1979; amd. Sec. 4, Ch. 480, L. 1981; amd. Sec. 1, Ch. 378, L. 1983; amd. Sec. 1, Ch. 199, L. 1985; amd. Sec. 5, Ch. 14, Sp. L. July 1992; amd. Sec. 10, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 substituted section concerning adjusted gross income for nonresident or part-year resident taxpayers for former section that read: "In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income as provided for in 15-30-111." Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-30-132. Change from nonresident to resident or vice versa. If a taxpayer changes his status from that of resident to that of nonresident or from that of nonresident to that of resident during the taxable year, he shall file a return. If a resident obtains employment outside the state, income from such employment is taxable in Montana.

History: En. Sec. 15, Ch. 181, L. 1933; re-en. Sec. 2295.15, R.C.M. 1935; amd. Sec. 9, Ch. 260, L. 1955; amd. Sec. 6, Ch. 253, L. 1959; R.C.M. 1947, 84-4915; amd. Sec. 6, Ch. 14, Sp. L. July 1992.

15-30-133. Income tax involving partnership — partnership statements required. Individuals carrying on a business in partnership shall be liable for income tax only in their individual capacity. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return.

History: En. Sec. 11, Ch. 181, L. 1933; re-en. Sec. 2295.11, R.C.M. 1935; amd. Sec. 5, Ch. 260, L. 1955; amd. Sec. 4, Ch. 253, L. 1959; R.C.M. 1947, 84-4911.

15-30-134. Determination of marital status. For purposes of this chapter:

(1) the determination of whether an individual is married shall be made as of the close of his taxable year, except that if his spouse dies during his taxable year, such determination shall be made as of the time of such death; and

(2) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

History: En. Sec. 10, Ch. 181, L. 1933; re-en. Sec. 2295.10, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974; R.C.M. 1947, 84-4910(h).

15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax shall be imposed upon either the fiduciaries or the beneficiaries of estates and trusts as hereinafter provided, except to the extent such estates and trusts shall be held for educational, charitable, or religious purposes, which tax shall be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) income held for future distribution under the terms of the will or trust; and

(d) income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of a minor, to be held or distributed as the court may direct.

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries are taxable with reference to the income of such estate or trust. In cases under subsections (a) and (d) of subsection (1), the fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under subsections (a), (b), and (c) of subsection (1), the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary. If the taxpayer's net income for the taxable year of the estate or trust is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year shall be computed upon the basis on which such beneficiary's net income is computed. In such cases, a beneficiary not a resident shall be taxable with respect to his income derived through such estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

(4) The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but any amount contributed to such fund by the employer and all earnings of such fund shall be included in computing the income of the distributee in the year in which distributed or made available to him.

(5) Where any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction) or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such part of the income of the trust shall be included in computing the net income of the grantor.

History: En. Sec. 12, Ch. 181, L. 1933; re-en. Sec. 2295.12, R.C.M. 1935; amd. Sec. 6, Ch. 260, L. 1955; R.C.M. 1947, 84-4912; amd. Sec. 1, Ch. 2, L. 1983; amd. Sec. 1, Ch. 260, L. 1983.

15-30-136. Computation of income of estates or trusts — exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the taxable year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion which is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended, if the expenses were not claimed as a deduction in the determination of Montana inheritance tax;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for the year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6).

History: En. Secs. 2, 3(1), (2), Ch. 260, L. 1983; amd. Sec. 2, Ch. 464, L. 1985; amd. Sec. 2, Ch. 657, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 4, Ch. 807, L. 1991; amd. Sec. 3, Ch. 823, L. 1991; amd. Sec. 7, Ch. 14, Sp. L. July 1992; amd. Sec. 1, Ch. 103, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 103 deleted former (3)(c) that read: "(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year"; and made minor changes in style.

Applicability: Section 2(1), Ch. 103, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

Rulemaking Authority: Section 2(2), Ch. 103, L. 1993, provided: "The department of revenue may institute rulemaking under Title 2, chapter 4, to implement [this act] prior to October 1, 1993, but the rules may not be effective prior to October 1, 1993."

15-30-137. Determination of tax of estates and trusts. The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rate contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.

History: En. Sec. 3(3), Ch. 260, L. 1983; amd. Sec. 11, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 near middle substituted "rate" for "rates". Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-30-138. Estates and trusts tax remedies. Remedies available for the administration, enforcement, and collection of individual income taxes also apply to estates and trusts.

History: En. Sec. 3(4), Ch. 260, L. 1983.

15-30-139 and 15-30-140 reserved.

15-30-141. Tax as personal debt. Every tax imposed by this chapter and all increases, interest, and penalties thereon shall be from the time they are due and payable a personal debt from the person or fiduciary liable to pay the same to the state.

History: En. Sec. 4, Ch. 181, L. 1933; re-en. Sec. 2295.4, R.C.M. 1935; R.C.M. 1947, 84-4904.

15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) A return must be filed as provided in subsections (2)(a) through (2)(d) on forms and according to rules prescribed by the department. The filing status used in subsection (2) must be the same status used for the individual's or married couple's federal income tax return.

(2) A return must be filed by:

(a) each single individual having gross income for the taxable year of more than the combined amount of the standard deduction for a single individual plus the amount for the exemption claimable by the individual as provided in 15-30-112;

(b) each individual filing as a head of household having gross income for the taxable year of more than the combined amount of the standard deduction for a head of household plus the amount for the exemption claimable by the individual as provided in 15-30-112;

(c) married individuals not filing separate returns and having a combined gross income for the taxable year of more than the combined amount of the standard deduction for married individuals not filing separately plus the amount for the exemption claimable by the individuals as provided in 15-30-112; and

(d) married individuals filing separately with combined gross income exceeding one-half of the combined amount of the standard deduction for married individuals not filing separately plus the amount for the exemption claimable by the individual as provided in 15-30-112.

(3) A nonresident is required to file a return if the nonresident's gross income for the taxable year derived from sources within Montana exceeds the total amount of the prorated exemption deduction and prorated standard deduction claimable by the nonresident and the nonresident's spouse under the provisions of 15-30-112(2), (3), and (4).

(4) In accordance with instructions set forth by the department, every taxpayer who is married, who is living with the taxpayer's spouse, and who is required to file a return may, at the taxpayer's option, file a joint return with the spouse even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(5) If a taxpayer is unable to make a return that is required to be made by the taxpayer, the return must be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(6) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and any payment made by reason of an estimated tax return provided for in 15-30-241 if the tax computed is greater by $1 than the amount withheld or paid by estimated return as provided in this chapter. If the amount of tax withheld or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(7) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(8) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction of a year on the additional tax. In that case, there is no penalty because of the understatement, provided the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(9) By November 1 of each year, the department shall determine the minimum amount of gross income necessitating the filing of a return for the taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return.

(10) Individual income tax forms distributed by the department for each taxable year must contain instructions and tables based on the adjusted base year structure for that taxable year.

(11) For the purposes of this section:

(a) "exemption" means an exemption provided by 15-30-112 and includes the adjustment provided in 15-30-112(6); and

(b) "standard deduction" means a deduction provided by 15-30-122 and includes the adjustment provided in 15-30-122(4).

History: En. Sec. 14, Ch. 181, L. 1933; re-en. Sec. 2295.14, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969; amd. Sec. 1, Ch. 450, L. 1973; amd. Sec. 171, Ch. 516, L. 1973; amd. Sec. 1, Ch. 159, L. 1977; R.C.M. 1947, 84-4914(part); amd. Sec. 12, Ch. 698, L. 1979; amd. Secs. 5, 6, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 4, L. 1981; amd. Sec. 2, Ch. 477, L. 1981; amd. Sec. 3, Ch. 548, L. 1981; amd. Sec. 8, Ch. 14, Sp. L. July 1992; amd. Sec. 12, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 inserted (1) requiring return to be filed as provided in subsections (2)(a) through (2)(d) on forms and according to rules prescribed by the Department and with the same filing status used on federal income tax return; in (2), at beginning, inserted "A return must be filed by"; near beginning of (2)(a), after "individual", deleted "and every married individual not filing a joint return with his or her spouse and" and substituted "more than the combined amount of the standard deduction for a single individual plus the amount for the exemption claimable by the individual as provided in 15-30-112" for "more than $1,000, as adjusted under the provisions of subsection (7)"; inserted (2)(b) concerning individual filing as a head of a household; in (2)(c), after "more than", substituted "the combined amount of the standard deduction for married individuals not filing separately plus the amount for the exemption claimable by the individuals as provided in 15-30-112" for "$2,000"; substituted (2)(d) concerning married individuals filing separately for "as adjusted under the provisions of subsection (7), shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4)"; in (3), after "Montana", substituted "exceeds the total amount of the prorated exemption deduction and prorated standard deduction claimable by the nonresident and the nonresident's spouse" for "exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse"; near beginning of (5), after "return", inserted "that is required to be made by the taxpayer"; in first sentence of (9), after "return", deleted "by the inflation factor"; inserted (11) defining exemption and standard deduction; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Cross-References

Failure to file return — show cause hearing, 15-30-316.

Penalty for failure to pay deficiency, 15-30-323.

Offset of tax refunds for debt due to state, 17-4-105.

15-30-143. Return of fiduciary. Every fiduciary (except receivers appointed by authority of law in possession of only part of the property of a taxpayer) shall make a return for the individual or estate or trust from whom he acts. Fiduciaries required to make returns under this section shall be subject to all the provisions of this chapter which apply to taxpayers.

History: En. Sec. 17, Ch. 181, L. 1933; re-en. Sec. 2295.17, R.C.M. 1935; amd. Sec. 10, Ch. 260, L. 1955; R.C.M. 1947, 84-4917.

15-30-144. Time for filing — extensions of time. (1) Returns shall be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return shall be made on or before the 15th day of April following the close of the calendar year. Each return shall set forth such facts as the department considers necessary for the proper enforcement of this chapter. There shall be annexed to such return the affidavit or affirmation of the persons making the return to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the department upon application, but failure to secure the form shall not relieve any taxpayer of the obligation to make any return required under this law. Every taxpayer liable for a tax under this law shall pay a minimum tax of $1.

(2) An automatic 6-month extension of time for filing a return is allowed, provided that:

(a) on or before the due date of the return, an application is made on forms available from the department or in writing to the department; and

(b) the applicant has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 95% of the current year's tax liability or 100% of the previous year's tax liability.

History: **En. Sec. 29, Ch. 181, L. 1933; re-en. Sec. 2295.19, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1935; amd. Sec. 172, Ch. 516, L. 1973; amd. Sec. 1, Ch. 340, L. 1975; R.C.M. 1947, 84-4919; amd. Sec. 1, Ch. 169, L. 1981; amd. Sec. 1, Ch. 796, L. 1991.**

Cross-References

Interest payable for time filing date extended, 15-30-323.

Certified copies of returns, 15-30-331.

15-30-145. Revision of return by department — statute of limitations — examination of records and persons. (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise the return.

(2) If a taxpayer does not file a return as required under this chapter, the department may, at any time, audit the taxpayer or estimate the taxable income of the taxpayer from any information in its possession and, based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state.

(3) Except as provided in subsections (2) and (4), the amount of tax due under any return may be determined by the department within 5 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of 15-30-147 and this section, a tax return due under this chapter and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.

(4) If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent return that violates a provision of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due.

(5) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose any books, papers, or records of memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of the person or the

attendance of any person having knowledge in the premises and may take testimony and require proof material for its information, with power to administer oaths to the person or persons.

History: En. Sec. 20, Ch. 181, L. 1933; re-en. Sec. 2295.20, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1955; amd. Sec. 173, Ch. 516, L. 1973; R.C.M. 1947, 84-4920; amd. Sec. 2, Ch. 648, L. 1979; amd. Sec. 1, Ch. 520, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 520 in (2), after "taxpayer", substituted "does not file" for "fails to make", after "department" substituted "may, at any time, audit the taxpayer or" for "is authorized to make an", and after "possession and" substituted "based upon the audit or estimate, assess the taxpayer" for "to audit and state an account according to such return or the estimate so made by it"; substituted (3) concerning date return is considered filed for "Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter, the amount of tax due under any return shall be determined by the department within 5 years after the return was made and the department thereafter shall be barred from revising any such returns or recomputing the tax due thereon, and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period, notwithstanding the provisions of 15-30-322"; at end of (4), after "due", deleted "and, where no return has been filed, the tax may be assessed at any time"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Applicability: Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

Cross-References

Failure to file return — show cause hearing, 15-30-316.

15-30-146. Tolling of statute of limitations. The running of the statute of limitations provided for under 15-30-145 shall be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by written agreement signed by the taxpayer or when the taxpayer has instituted an action which has the effect of suspending the running of the federal statute of limitations and for 1 additional year. If the taxpayer fails to file a record of changes in federal taxable income or an amended return as required by 15-30-304, the statute of limitations shall not apply until 5 years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable therein which is in excess of 25% of the amount of adjusted gross income stated in the return, the statute of limitations shall not apply for 2 additional years from the time specified in 15-30-145.

History: En. Sec. 2, Ch. 103, L. 1955; amd. Sec. 1, Ch. 61, L. 1967; R.C.M. 1947, 84-4920.1.

15-30-147. Application for revision — appeal. An application for revision may be filed with the department by a taxpayer within 5 years from the last day prescribed for filing the return as provided in 15-30-145(3), regardless of whether the return was filed on or after the last day prescribed for filing. If the department has revised a return pursuant to 15-30-145(3), the taxpayer may revise the same return until the liability for that tax year is finally determined. If the taxpayer is not satisfied with the action taken by the department, the taxpayer may appeal to the state tax appeal board.

History: En. Sec. 22, Ch. 181, L. 1933; re-en. Sec. 2295.22, R.C.M. 1935; amd. Sec. 1, Ch. 58, L. 1955; amd. Sec. 2, Ch. 201, L. 1963; amd. Sec. 102, Ch. 405, L. 1973; amd. Sec. 174, Ch. 516, L. 1973; R.C.M. 1947, 84-4922; amd. Sec. 2, Ch. 520, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 520 in first sentence, after "5 years from the", substituted remainder of sentence concerning last day for filing return and second sentence authorizing taxpayer to revise revised return until liability for tax year is finally determined for "original due date of the return" and at end of third sentence, after "board", deleted "as provided therein, which shall have authority to grant the claim or any part thereof"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Applicability: Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-30-148. Judicial review. (1) The determination of the state tax appeal board may be reviewed in the district court for Lewis and Clark County or the county in which the taxpayer resides or in which the taxpayer's principal office or place of business is located by a complaint filed by the taxpayer or the department within 60 days after the receipt of notice of the determination. Proceedings for review must be otherwise as specified under the Montana Administrative Procedure Act.

(2) The remedies provided by this chapter for the collection of the tax must be stayed, and an assessment, distraint, or proceedings in court for collection of the taxes may not be made, begun, or prosecuted until 90 days after the court action is finally determined. From any determination of the court, an appeal to the supreme court may be taken by either party.

History: En. Sec. 1, Ch. 212, L. 1957; amd. Sec. 103, Ch. 405, L. 1973; amd. Sec. 6, Ch. 155, L. 1977; R.C.M. 1947, 84-4923.1; amd. Sec. 8, Ch. 811, L. 1991; amd. Sec. 1, Ch. 214, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 214 in (1) increased appeal time to 60 days from 30 days; and made minor changes in style.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Review of disapproval of Department to refund overpayment of tax, 15-1-503.

15-30-149. Credits and refunds — period of limitations. (1) If the department discovers from the examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes. Interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment is the date on which the return for the taxable year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding taxable year. Interest does not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

(a) the overpayment is refunded within 6 months from the date the return is due or the date the return is filed, whichever date is later;

(b) the overpayment results from the carryback of a net operating loss; or

(c) the amount of interest is less than $1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 138, L. 1957; amd. Sec. 3, Ch. 199, L. 1963; amd. Sec. 192, Ch. 516, L. 1973; R.C.M. 1947, 84-4956; amd. Sec. 1, Ch. 113, L. 1979; amd. Sec. 1, Ch. 589, L. 1981; amd. Sec. 9, Ch. 811, L. 1991; amd. Sec. 3, Ch. 520, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 520 in (2)(a), before "15-30-146", deleted "15-30-145 and by" and after "15-30-146" substituted "and 15-30-147" for "during which the department may determine tax liability"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Applicability: Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

15-30-150. Voluntary checkoff for nongame wildlife programs. (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to the funding of nongame wildlife programs in Montana by marking the appropriate box on the state income tax return.

(2) The department shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to nongame wildlife programs. The provision must be in substantially the following form:

Montana nongame wildlife funding. Check the appropriate blank if you wish to contribute, in addition to your existing tax liability, ___$5, ___$10, or ___(specify an amount) to fund nongame wildlife programs in Montana. If a joint return, check the appropriate blank if your spouse wishes to contribute, in addition to your existing tax liability, ___$5, ___$10, or ___(specify an amount) for the same purpose.

(3) Money received under this section, after the department has deducted the administrative charge provided for in 15-30-153, must be deposited in the nongame wildlife account established by 87-5-121. *(Terminates on occurrence of contingency—sec. 12, Ch. 581, L. 1993.)*

History: **En. Sec. 3, Ch. 627, L. 1983; amd. Sec. 1, Ch. 436, L. 1985; amd. Sec. 3, Ch. 581, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 581 in (3), after "section", inserted "after the department has deducted the administrative charge provided for in 15-30-153"; and made minor changes in style. Amendment effective April 28, 1993.

Retroactive Applicability: Section 11, Ch. 581, L. 1993, provided: "[Sections 1 through 6] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

Contingent Termination: Section 12, Ch. 581, L. 1993, provided: "A voluntary income tax checkoff created in 15-30-150, 15-30-152, or 15-30-155 terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than $20,000 in each of those 2 tax years."

15-30-151. Agriculture in Montana schools program account — administration. (1) There is an agriculture in Montana schools program account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under 15-30-152 must be deposited in the account.

(3) Money in the account must be used by the department of agriculture to provide funding for developing and presenting, through the joint efforts of the United States department of agriculture, educators at all levels, and representatives of agricultural organizations statewide and nationwide, an educational program that will provide young people with a better understanding of the crucial role of agriculture in all aspects of society and of how Montana agriculture relates to the rest of the world.

History: **En. Sec. 1, Ch. 634, L. 1985.**

15-30-152. Voluntary checkoff for agriculture in Montana schools program. (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to the funding of the agriculture in Montana schools program by marking an appropriate box on the state income tax return.

(2) The department shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to the agriculture in Montana schools program. The contribution may be made from the amount to be refunded to the taxpayer or, if no refund is due, must be in addition to the amount of tax required to be paid. The provision must be in substantially the following form:

Check the appropriate blank if you wish to contribute ___ $5, ___ $10, ___ $20, or ___ (specify an amount) of your tax refund, or add such amount to your tax payment, to fund the agriculture in Montana schools program. If a joint return, check the appropriate blank if your spouse wishes to designate ___ $5, ___ $10, ___ $20, or ___ (specify an amount) for the same purpose.

(3) Money received under this section must be deposited in the agriculture in Montana schools program account established by 15-30-151 after the department has deducted the amount necessary for the department to administer this section as provided in 15-30-153. *(Terminates on occurrence of contingency—sec. 12, Ch. 581, L. 1993.)*

History: **En. Sec. 2, Ch. 634, L. 1985; amd. Sec. 4, Ch. 581, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 581 at end of (3) inserted "as provided in 15-30-153"; and made minor changes in style. Amendment effective April 28, 1993.

Retroactive Applicability: Section 11, Ch. 581, L. 1993, provided: "[Sections 1 through 6] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Contingent Termination: Section 12, Ch. 581, L. 1993, provided: "A voluntary income tax checkoff created in 15-30-150, 15-30-152, or 15-30-155 terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than $20,000 in each of those 2 tax years."

15-30-153. Funding for administration of special revenue accounts — special revenue account for tax checkoff administration. (1) The department shall charge any special revenue account created after January 1, 1993, that is funded by means of an income tax checkoff the actual and necessary cost to create the special revenue account and to place the checkoff on the income tax return.

(2) In addition to the charges in subsection (1), the department shall charge each special revenue account funded by means of an income tax checkoff the actual expenses necessary to administer the account. The department's charges may not exceed $3,000 for a tax year.

(3) There are special revenue accounts in the state treasury for the administration of income tax checkoffs.

(4) All charges collected pursuant to subsections (1) and (2) must be deposited in a tax checkoff administration account.

(5) The money in a tax checkoff administration account, subject to appropriation, must be expended to administer the income tax checkoff for which the account was created.

History: En. Secs. 1, 2, Ch. 581, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Sections 10 and 11, Ch. 581, L. 1993, provided that this section is effective on passage and approval and applies to tax years beginning after December 31, 1992. Approved April 28, 1993.

15-30-154 reserved.

15-30-155. Voluntary checkoff for child abuse and neglect prevention program. (1) Each individual taxpayer who is required to file an income tax return under this chapter and who is entitled to a refund may contribute to the child abuse and neglect prevention program provided for in 41-3-701, by marking the appropriate box on the state income tax return.

(2) Each Montana state individual income tax return form must contain a provision for indicating a contribution to the child abuse and neglect prevention program in substantially the following form:

Child abuse and neglect prevention program. Check this box if you wish to designate $5 ..., $10 ..., or more ... (indicate amount) of your tax refund to help fund the child abuse and neglect prevention program in Montana. On a joint return, check the corresponding box for your spouse if your spouse wishes to contribute $5 ..., $10 ..., or more ... (indicate amount) of the refund for the same purpose.

(3) Money received under this section must be deposited in the children's trust fund account, created under 41-3-702, after the department has deducted the amount necessary for the department to administer this section as provided in 15-30-153. *(Terminates on occurrence of contingency—sec. 12, Ch. 581, L. 1993.)*

History: En. Sec. 9, Ch. 610, L. 1985; amd. Sec. 5, Ch. 581, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 581 at end of (3) inserted "as provided in 15-30-153"; and made minor changes in style. Amendment effective April 28, 1993.

Retroactive Applicability: Section 11, Ch. 581, L. 1993, provided: "[Sections 1 through 6] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Contingent Termination: Section 12, Ch. 581, L. 1993, provided: "A voluntary income tax checkoff created in 15-30-150, 15-30-152, or 15-30-155 terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than $20,000 in each of those 2 tax years."

15-30-156. Repealed. Sec. 22, Ch. 634, L. 1993.
History: En. Sec. 10, Ch. 610, L. 1985.

15-30-157. Repealed. Sec. 22, Ch. 634, L. 1993.
History: En. Sec. 11, Ch. 610, L. 1985.

15-30-158. Voluntary checkoff for the Montana drug abuse resistance education program. (1) Each individual taxpayer who is required to file an income tax return under this chapter and who is entitled to a refund may contribute to the Montana drug abuse resistance education program, provided for in 44-2-702, by marking the appropriate box on the state income tax return.

(2) Each state individual income tax return must contain a provision for indicating a contribution to the Montana drug abuse resistance education program in substantially the following form:

"Montana Drug Abuse Resistance Education (D.A.R.E.) Program. Check this box if you wish to designate $5 ..., $10 ..., or more ... (indicate amount) of your tax refund to help fund the Drug Abuse Resistance Education Program in Montana. On a joint return, check the corresponding box for your spouse if your spouse wishes to contribute $5 ..., $10 ..., or more ... (indicate amount) of the refund for the same purpose."

(3) Money received under this section must be deposited in the Montana drug abuse resistance education trust fund account, created under 44-2-701, after the department has deducted the amount necessary for the department to administer this section as provided in 15-30-153. *(Terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)*

History: En. Sec. 7, Ch. 808, L. 1991; amd. Sec. 6, Ch. 581, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 581 at end of (3) inserted "as provided in 15-30-153"; and made minor changes in style. Amendment effective April 28, 1993.

Retroactive Applicability: Section 11, Ch. 581, L. 1993, provided: "[Sections 1 through 6] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Contingent Termination: Section 12, Ch. 808, L. 1991, provided: "[Sections 6(7) and 7 through 9] [15-30-121(7) and 15-30-158 through 15-30-160], concerning the voluntary income tax checkoff and allowable income tax deductions for contributions made to the D.A.R.E. program, terminate on January 1 of the first taxable year following the 2 immediately preceding taxable years in which the voluntary checkoff raises less than $20,000 in each of those 2 taxable years."

Cross-References

Montana drug abuse resistance education program (D.A.R.E.), Title 44, ch. 2, part 7.

15-30-159. Repealed. Sec. 22, Ch. 634, L. 1993.
History: En. Sec. 8, Ch. 808, L. 1991.

15-30-160. Repealed. Sec. 22, Ch. 634, L. 1993.
History: En. Sec. 9, Ch. 808, L. 1991.

15-30-161. Purpose. The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations defined in 15-31-201, to take the investment credit as provided for in 15-30-162 in order to stimulate capital investment by the small business sector.

History: En. 84-4960 by Sec. 1, Ch. 412, L. 1977; R.C.M. 1947, 84-4960; amd. Sec. 1, Ch. 111, L. 1979; amd. Sec. 1, Ch. 520, L. 1981; amd. Sec. 5, Ch. 807, L. 1991.

15-30-162. Investment credit. (1) There is allowed as a credit against the tax imposed by 15-30-103 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended. However, rehabilitation costs as set forth under section 46(a)(2)(F) of the Internal Revenue Code of 1954, or as section 46(a)(2)(F) may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954, as amended, if the property meets all of the following qualifications:

(a) it was placed in service in Montana; and

(b) it was used for the production of Montana adjusted gross income.

(2) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended.

(3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year or $500, whichever is less.

(4) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the taxable year the property was located in Montana and the denominator of which is the number of days during the taxable year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed. The credit may not be allocated between spouses unless the property is used by a partnership or small business corporation of which they are partners or shareholders.

(5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended.

History: En. 84-4961 by Sec. 2, Ch. 412, L. 1977; R.C.M. 1947, 84-4961(part); amd. Sec. 2, Ch. 111, L. 1979; amd. Sec. 2, Ch. 422, L. 1981; amd. Sec. 2, Ch. 520, L. 1981; amd. Sec. 1, Ch. 704, L. 1983.

Cross-References

Corporate investment credit, 15-31-123.

15-30-163. Credit for contributions to university system foundations. (1) For taxable years beginning after December 31, 1990, and before January 1, 1996, an individual, corporation, partnership, or small business corporation, as defined in 15-31-201, is allowed a tax credit against taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 10% of the aggregate amount of charitable contributions made by the taxpayer during the year to any of the general endowment funds of the Montana university system foundations or a general endowment fund of a Montana private college or its foundation. The maximum credit a taxpayer may claim in a year under this section is $500. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(3) (a) For the purposes of this section, "foundation" means a nonprofit organization created exclusively for the benefit of any unit of the Montana university system or a Montana private college and that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(b) For the purposes of this section, "Montana private college" means a nonprofit private educational institution:

(i) whose main campus and primary operations are within the state; and

(ii) that offers baccalaureate degree level education and is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education.

History: En. Sec. 1, Ch. 542, L. 1991.

15-30-164. Credit for alternative fuel motor vehicle conversion. (1) (a) Except as provided in subsection (1)(b), an individual, a corporation, a partnership, or a small business corporation as defined in 15-31-201 is allowed a tax credit against taxes imposed by 15-30-103 or 15-31-101 for equipment and labor costs incurred to convert a motor vehicle licensed in Montana to operate on alternative fuel.

(b) A seller of alternative fuel may not receive a credit for converting its own vehicles to the alternative fuel that it sells.

(2) The maximum credit a taxpayer may claim in a year under this section is an amount equal to 50% of the equipment and labor costs incurred but the credit may not exceed:

(a) $500 for conversion of a motor vehicle with a gross weight of 10,000 pounds or less; or

(b) $1,000 for conversion of a motor vehicle with a gross vehicle weight over 10,000 pounds.

(3) For the purposes of this section, "alternative fuel" means:

(a) natural gas;

(b) liquefied petroleum gas;

(c) liquefied natural gas;

(d) hydrogen;

(e) electricity; or

(f) any other fuel if at least 85% of the fuel is methanol, ethanol or other alcohol, ether, or any combination of them.

(4) (a) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(b) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the conversion is made, as determined by the taxpayer's accounting method.

History: En. Sec. 1, Ch. 617, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 617, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved May 6, 1993.

15-30-165 through 15-30-169 reserved.

15-30-170. Credit for sale of business. (1) (a) For tax years beginning after December 31, 1992, an individual who realizes a gain that must be included in Montana adjusted gross income, from the sale of a business, trade, or profession, is allowed a one-time credit against the tax imposed by 15-30-103.

(b) To be eligible for the credit, the individual, including the individual's parents, grandparents, children, and grandchildren, must have held the interest in the business, trade, or profession for at least 15 years.

(2) (a) Subject to the limitation contained in subsection (2)(b), the credit must be computed by multiplying the gain that was included in the Montana adjusted gross income from the sale times the individual's highest federal tax rate in the tax year in which the gain from the sale is reported times this state's highest tax rate for that individual in the same year.

(b) For an individual who realized a gain in excess of $1 million, the credit is reduced at the rate of 1% for every $20,000 of gain in excess of $1 million.

(c) The credit provided for in this section is not refundable, nor may it be carried back or carried forward.

(3) For sales that occurred prior to December 31, 1992, and for which the gain for the sale of the business, trade, or profession is being reported on the installment basis, the individual shall satisfy the requirements of subsection (1)(b).

History: En. Sec. 8, Ch. 634, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-30-171. Residential property tax credit for elderly — definitions. As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(2) "Claimant" means an individual natural person who is eligible to file a claim under 15-30-172.

(3) "Department" means the department of revenue.

(4) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's length transaction with the landlord.

(6) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(7) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(8) "Household income" means $0 or the amount obtained by subtracting the greater of $4,000 or 50% of total retirement benefits from gross household income, whichever is greater.

(9) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; and

(h) all payments received under federal social security except social security income paid directly to a nursing home.

(10) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent.

History: En. Sec. 1, Ch. 584, L. 1981; amd. Sec. 1, Ch. 134, L. 1983; amd. Sec. 1, Ch. 605, L. 1983; amd. Sec. 1, Ch. 27, L. 1987; amd. Sec. 1, Ch. 559, L. 1989; amd. Sec. 1, Ch. 693, L. 1989; amd. Sec. 3, Ch. 612, L. 1991.

15-30-172. Residential property tax credit for elderly — eligibility. (1) In order to be eligible to make a claim under 15-30-171 through 15-30-179, an individual:

(a) must have reached age 62 or older during the claim period for which relief is sought;

(b) must have resided in Montana for at least 9 months of that period; and

(c) must have occupied one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months of the claim period.

(2) A person is not disqualified as a claimant if the person changes residences during the claim period, provided that he occupies one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months during the claim period.

History: En. Sec. 2, Ch. 584, L. 1981; amd. Sec. 2, Ch. 27, L. 1987.

15-30-173. Residential property tax credit for elderly — disallowance or adjustment of certain claims. (1) A claim is disallowed if the department finds that the claimant received title to his homestead primarily for the purpose of receiving benefits under 15-30-171 through 15-30-179.

(2) When the landlord and tenant have not dealt at arm's length and the department judges the gross rent charged to be excessive, the department may adjust the gross rent to a reasonable amount.

History: En. Sec. 3, Ch. 584, L. 1981.

15-30-174. Residential property tax credit for elderly — filing date. (1) Except as provided in subsection (2), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists. The department shall keep a record of each extension and the reason for granting the extension.

(3) In the event that an individual who would have a claim under 15-30-171 through 15-30-179 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

History: En. Sec. 4, Ch. 584, L. 1981.

15-30-175. Residential property tax credit for elderly — form of relief. Relief under 15-30-171 through 15-30-179 is a credit against the claimant's Montana individual income tax liability for the claim period. If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess shall be refunded to the claimant. The credit may be claimed even though the claimant has no income taxable under this chapter.

History: En. Sec. 5, Ch. 584, L. 1981.

15-30-176. Residential property tax credit for elderly — computation of relief. The amount of the tax credit granted under the provisions of 15-30-171 through 15-30-179 is computed as follows:

(1) In the case of a claimant who owns the homestead for which a claim is made, the credit is the amount of property tax paid less the deduction specified in subsection (4).

(2) In the case of a claimant who rents the homestead for which a claim is made, the credit is the amount of rent-equivalent tax paid less the deduction specified in subsection (4).

(3) In the case of a claimant who both owns and rents the homestead for which a claim is made, the credit is:

(a) the amount of property tax paid on the owned portion of the homestead less the deduction specified in subsection (4); plus

(b) the amount of rent-equivalent tax paid on the rented portion of the homestead less the deduction specified in subsection (4).

(4) Property tax paid and rent-equivalent tax paid are reduced according to the following schedule:

Household income	Amount of reduction
$ 0-999	$0
1,000-1,999	$0

2,000-2,999	the product of .006 times the household income
3,000-3,999	the product of .016 times the household income
4,000-4,999	the product of .024 times the household income
5,000-5,999	the product of .028 times the household income
6,000-6,999	the product of .032 times the household income
7,000-7,999	the product of .035 times the household income
8,000-8,999	the product of .039 times the household income
9,000-9,999	the product of .042 times the household income
10,000-10,999	the product of .045 times the household income
11,000-11,999	the product of .048 times the household income
12,000 & over	the product of .050 times the household income

(5) In no case may the credit granted exceed $400.

History: En. Sec. 6, Ch. 584, L. 1981; amd. Sec. 2, Ch. 134, L. 1983.

15-30-177. Residential property tax credit for elderly — limitations. (1) Only one claimant per household in a claim period under the provisions of 15-30-171 through 15-30-179 is entitled to relief.

(2) Except as provided in subsection (3), no claim for relief may be allowed for any portion of property taxes paid or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

(3) Except for dwellings rented from a county or municipal housing authority, no claim for relief may be allowed on rented lands or rented dwellings that are not subject to ad valorem taxation in Montana during the claim period.

History: En. Sec. 7, Ch. 584, L. 1981; amd. Sec. 3, Ch. 134, L. 1983; amd. Sec. 2, Ch. 559, L. 1989.

15-30-178. Residential property tax credit for elderly — proof of claim. A receipt showing property tax paid or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant must, at the request of the department, supply all additional information necessary to support his claim.

History: En. Sec. 8, Ch. 584, L. 1981.

15-30-179. Residential property tax credit for elderly — denial of claim. A person filing a false or fraudulent claim under the provisions of 15-30-171 through 15-30-179 shall be charged with the offense of unsworn falsification to authorities pursuant to 45-7-203. If a false or fraudulent claim has been paid, the amount paid may be recovered as any other debt owed to the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt shall bear interest from the date of the original payment of claim until paid, at the rate of 1% per month.

History: En. Sec. 9, Ch. 584, L. 1981.

15-30-180 through 15-30-185 reserved.

15-30-186. Credit for dependent care assistance. There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance. The credit must be computed in accordance with the provisions of 15-31-131.

History: En. Sec. 2, Ch. 706, L. 1989.

Cross-References

Credit for dependent care assistance — corporation license or income tax, 15-31-131.

15-30-187 reserved.

15-30-188. Credit for physician practicing in rural area — definitions. For the purposes of 15-30-188 through 15-30-191, the following definitions apply:

(1) "Commences practice" means the location or relocation of a physician's principal place of practice to a rural area and the start of a practice that is open to the general public, including recipients of medical assistance under Title 53. The term does not include the relocation of a physician's practice from one rural area to a different rural area.

(2) "Rural area" means a place without a hospital of at least 60 beds located within a radius of 30 miles.

History: En. Sec. 1, Ch. 771, L. 1991.

15-30-189. Tax credit for physician practicing in rural area. A licensed physician who commences practice in a rural area in Montana on a full-time basis is entitled to a credit against taxes imposed by 15-30-103 in an amount of $5,000 a year for each of 4 successive years, beginning with the year in which the practice commences. To qualify for the credit provided in this section, the physician shall maintain his practice for at least 9 months of the taxable year in which the credit is claimed.

History: En. Sec. 2, Ch. 771, L. 1991.

15-30-190. Credit for physician practicing in rural area — limitations — repayment. (1) Except as provided in subsection (2), the rural physician tax credit authorized in 15-30-189 is to be deducted from the taxpayer's income tax liability, beginning in the taxable year in which the physician commences practice in a rural area and for the next 3 successive years.

(2) (a) A rural physician tax credit may not be claimed as a carryback or carryforward and may not be refunded if there is no tax liability.

(b) A rural physician tax credit may not be used for any taxable year in which the physician ceases to practice or does not practice in the rural area.

(3) If a physician ceases to practice in the rural area within 4 years following the taxable year in which the credit is allowed, the physician shall repay to the state the amount of the credit claimed for that taxable year.

History: En. Sec. 3, Ch. 771, L. 1991.

15-30-191. Credit for physician practicing in rural area — rulemaking authority. The department of revenue may adopt rules as are necessary to implement and administer 15-30-188 through 15-30-191.

History: En. Sec. 4, Ch. 771, L. 1991.

15-30-192 through 15-30-198 reserved.

15-30-199. Repealed. Sec. 22, Ch. 634, L. 1993.

History: En. Sec. 2, Ch. 15, Sp. L. July 1992.

Part 2

Withholding and Estimated Tax

15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision thereof or any agency or instrumentality of the United States, the state of Montana, or a political subdivision thereof. The term "employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person; except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term "employer" means the person having control of the payment of wages.

(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include remuneration paid:

(a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during a quarter the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed (as determined under subsection (4)(d)(i)) by the employer in the performance of service during the preceding calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when the payments are in the form of lodgings or meals and the services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;

(j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

(k) as tips, in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(l) by an employer for dependent care assistance actually provided to or on behalf of an employee and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in section 129(b) of the Internal Revenue Code as it read on January 1, 1989. *(Subsection (4)(k) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)*

History: En. Sec. 1, Ch. 246, L. 1955; amd. Sec. 185, Ch. 516, L. 1973; R.C.M. 1947, 84-4942(part); amd. Sec. 20, Ch. 581, L. 1979; amd. Sec. 1, Ch. 128, L. 1983; amd. Sec. 2, Ch. 634, L. 1983; amd. Sec. 3, Ch. 706, L. 1989.

Compiler's Comments

Contingent Termination: Section 3, Ch. 634, L. 1983, provided: "This act terminates if congress passes and the president approves legislation that removes the provision in section 6053(c)(3) of the Internal Revenue Code of 1954 that requires an employee allocation for tax purposes of 8% of gross receipts of the business for which the employee works. If this act terminates, it does so on the date of the final approval of the congressional legislation."

15-30-202. Withholding of tax from wages. Every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the department. Persons on active service as members of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33), and members of the national guard and reserves participating in training as provided in 5 U.S.C. 5517(d) shall not be subject to the provisions of this section.

History: En. Sec. 2, Ch. 246, L. 1955; amd. Sec. 3, Ch. 227, L. 1957; amd. Sec. 186, Ch. 516, L. 1973; R.C.M. 1947, 84-4943; amd. Sec. 2, Ch. 128, L. 1983.

Cross-References

Return required and withholding credited against taxes due on return, 15-30-142.

Employer to provide employee with statement of deductions, 39-3-101.

15-30-203. Employer liable for withholding. (1) Each employer is liable for the amounts required to be deducted and withheld under this part, and the amounts plus interest due on the amounts are a tax. With respect to the tax, the employer is the taxpayer.

(2) The officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay to the state the amounts withheld from the corporation's employees and who fails to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on the amounts.

(3) If the employer fails to deduct and withhold the amounts specified in 15-30-202 and thereafter the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the employer.

History: En. Sec. 4, Ch. 246, L. 1955; R.C.M. 1947, 84-4945; amd. Sec. 1, Ch. 681, L. 1979; amd. Sec. 1, Ch. 33, L. 1991.

15-30-204. Quarterly or weekly payment. (1) Except as provided in subsection (3), on or before the last day of April, July, October, and January, every employer subject to the provisions of 15-30-202 and 15-30-203 shall file a return in such form and containing such information as may be required by the department and, except as provided in subsection (2), shall pay therewith the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid during the preceding quarter. Quarterly returns for employers paying weekly shall be used to summarize and adjust payments and request refunds of overpayments.

(2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings equalled or exceeded $300,000 for the preceding calendar year shall remit a weekly payment to the department for the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid during the preceding week. The weekly payment must be submitted on or before the date on which federal income tax weekly withholding payments are due.

(3) If the total amount of the tax withheld by an employer under the provisions of 15-30-202 upon the wages of all employees of any employer is less than $10 in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in subsection (1), but in lieu thereof such employer shall, on or before February 28 of the year succeeding that in which such wages were paid, file an annual return in such form as may be required by the department and shall pay therewith the amount required to be deducted and withheld by the employer from all wages paid during the preceding calendar year.

(4) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of income tax.

History: En. Sec. 5, Ch. 246, L. 1955; amd. Sec. 1, Ch. 212, L. 1967; amd. Sec. 187, Ch. 516, L. 1973; R.C.M. 1947, 84-4946; amd. Sec. 1, Ch. 28, Sp. L. June 1986; amd. Sec. 2, Ch. 289, L. 1989.

15-30-205. Amount withheld considered as tax collected. All amounts deducted and withheld shall be considered as a tax collected under the provisions of 15-30-201 through 15-30-209, and no employee shall have any right of action against his employer in respect to any moneys so deducted and withheld from his wages and paid to the state in compliance or intended compliance with 15-30-201 through 15-30-209.

History: En. Sec. 6, Ch. 246, L. 1955; R.C.M. 1947, 84-4947; R.C.M. 1947, 84-4947.

15-30-206. Annual withholding statement. Every employer shall, prior to January 31 in each year, furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from such wages and the amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209. Said statement shall contain such additional information and shall be in such form as the department shall prescribe, and a duplicate thereof shall be filed by the employee with his state income tax return.

History: En. Sec. 7, Ch. 246, L. 1955; amd. Sec. 188, Ch. 516, L. 1973; R.C.M. 1947, 84-4948; amd. Sec. 3, Ch. 289, L. 1989.

15-30-207. Annual statement by employer. (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in such form and summarizing such information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part thereof and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209 and 39-71-2503.

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents, and no additional information return is required with respect to such wage payments.

(3) In addition to any other penalty provided by law, the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of $5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 28 of each year shall be $50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts.

History: En. Sec. 9, Ch. 246, L. 1955; amd. Sec. 189, Ch. 516, L. 1973; R.C.M. 1947, 84-4950; amd. Sec. 1, Ch. 36, L. 1983; amd. Sec. 4, Ch. 289, L. 1989; amd. Sec. 7, Ch. 637, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 637 at end of (1) inserted "and 39-71-2503". Amendment effective May 13, 1993.

Retroactive Applicability: Section 14, Ch. 637, L. 1993, provided: "The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-30-208. Withheld taxes held in trust for state — warrants to collect. (1) Every employer who deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the same in trust for the state of Montana.

(2) If any tax imposed by 15-30-201 through 15-30-209 or any portion of such tax is not paid when due, the department may issue a warrant for

distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(3) The tax lien provided for in subsection (2) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers to the third party an affidavit as provided in subsection (3) is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding the provisions of 15-30-321(3), the department may bring an action as provided for in that subsection in the name of the state to recover the civil penalty and any delinquent taxes.

History: En. Sec. 10, Ch. 246, L. 1955; amd. Sec. 190, Ch. 516, L. 1973; R.C.M. 1947, 84-4951; amd. Sec. 10, Ch. 439, L. 1981; amd. Sec. 1, Ch. 34, L. 1985; amd. Sec. 1, Ch. 489, L. 1987.

15-30-209. Violations by employer — penalties and remedies. (1) If any employer shall fail to pay over to the state the tax deducted and withheld under the provisions of 15-30-201 through 15-30-208 or shall fail to file or furnish any statement provided for within the time prescribed therefor, the same additions to the amount of such tax shall be imposed and added as those specified in 15-30-321 with respect to failure to make a return of income or to pay any income tax, and any individual, corporation, or partnership or any officer or employee thereof who, with intent to evade any tax or any requirement of 15-30-201 through 15-30-208, or who, with like intent, files or supplies any false or fraudulent statement or information shall be liable to the same penalties as those imposed by 15-30-321 with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

(2) All of the remedies available to the state for the administration, enforcement, and collection of income taxes shall be available and shall apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208.

History: (1)En. Sec. 13, Ch. 246, L. 1955; Sec. 84-4954, R.C.M. 1947; (2)En. Sec. 14, Ch. 246, L. 1955; amd. Sec. 191, Ch. 516, L. 1973; Sec. 84-4955, R.C.M. 1947; R.C.M. 1947, 84-4954, 84-4955(part).

Cross-References

Administration and collection of income taxes, Title 15, ch. 30, part 3.

15-30-210 through 15-30-214 reserved.

15-30-215. Voluntary state withholding from federal annuity — agreement with federal government. (1) The director of revenue shall enter into an agreement with the federal office of personnel management to allow voluntary state tax withholding from federal annuity payments as provided in 5 U.S.C. 8345.

(2) The department of revenue may adopt administrative rules necessary to implement the federal agreement entered into under subsection (1) and to

comply with federal laws and regulations for voluntary withholding from federal annuity payments.

History: En. Sec. 1, Ch. 243, L. 1993.

Compiler's Comments

Effective Date: Section 3, Ch. 243, L. 1993, provided: "[This act] is effective July 1, 1993."

15-30-216 through 15-30-220 reserved.

15-30-221 through 15-30-227. Repealed. Sec. 3, Ch. 570, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

15-30-221. (1) thru (3)En. Sec. 2, Ch. 208, L. 1959; amd. Sec. 1, Ch. 154, L. 1961; amd. Sec. 159, Ch. 516, L. 1973; Sec. 84-4903.2, R.C.M. 1947; (4)En. Sec. 3, Ch. 208, L. 1959; Sec. 84-4903.3, R.C.M. 1947; R.C.M. 1947, 84-4903.2, 84-4903.3; amd. Sec. 21, Ch. 581, L. 1979.

15-30-222. (1)En. Sec. 4, Ch. 208, L. 1959; Sec. 84-4903.4, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 208, L. 1959; amd. Sec. 2, Ch. 154, L. 1961; amd. Sec. 3, Ch. 10, Ex. L. 1969; amd. Sec. 160, Ch. 516, L. 1973; Sec. 84-4903.5, R.C.M. 1947; R.C.M. 1947, 84-4903.4, 84-4903.5.

15-30-223. En. Sec. 6, Ch. 208, L. 1959; amd. Sec. 161, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.6.

15-30-224. En. Sec. 7, Ch. 208, L. 1959; amd. Sec. 3, Ch. 154, L. 1961; amd. Sec. 162, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.7.

15-30-225. En. Sec. 8, Ch. 208, L. 1959; amd. Sec. 163, Ch. 516, L. 1973; amd. Sec. 4, Ch. 34, L. 1977; R.C.M. 1947, 84-4903.8.

15-30-226. En. Sec. 9, Ch. 208, L. 1959; amd. Sec. 164, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.9; amd. Sec. 11, Ch. 439, L. 1981.

15-30-227. En. Sec. 10, Ch. 208, L. 1959; amd. Sec. 165, Ch. 516, L. 1973; R.C.M. 1947, 84-4903.10.

15-30-228. Nonresident ad valorem taxpayers — list — duty of department. It shall be the duty of the department or its agent in every county in this state to prepare annually a list showing the names and addresses of all nonresident ad valorem taxpayers in the county as shown on the current assessment roll and forward such list to the department after the completion of the roll on the second Monday in July, but not later than September 30 of each year.

History: En. Sec. 11, Ch. 208, L. 1959; amd. Sec. 100, Ch. 405, L. 1973; R.C.M. 1947, 84-4903.11.

Cross-References

County Assessor as agent of the Department, 15-8-102.

15-30-229 through 15-30-240 reserved.

15-30-241. Estimated tax — payment — exceptions — penalty. (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-202, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or

(ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than $500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) For each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) For each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter a penalty equal to 10% a year on the amount of the underpayment. The penalty is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the penalty in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the penalty in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For each married taxpayer filing separately on the same form, the penalty provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) A penalty may not be imposed with respect to any underpayment of the fourth installment of estimated taxes if:

(i) the taxpayer pays in full the amount computed on the return as payable; and

(ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 ⅔% of the taxpayer's gross income, as defined in 15-30-101(7), from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months.

History: En. 84-4939 by Sec. 12, Ch. 260, L. 1955; amd. Sec. 183, Ch. 516, L. 1973; amd. Sec. 1, Ch. 374, L. 1977; R.C.M. 1947, 84-4939(part); amd. Sec. 1, Ch. 17, Sp. L. January 1992.

Cross-References

Return required and estimated tax credited against taxes due, 15-30-142.

15-30-242. Repealed. Secs. 2, 4, Ch. 17, Sp. L. January 1992.

History: En. 84-4940 by Sec. 13, Ch. 260, L. 1955; amd. Sec. 184, Ch. 516, L. 1973; amd. Sec. 2, Ch. 374, L. 1977; R.C.M. 1947, 84-4940(part).

15-30-243 through 15-30-245 reserved.

15-30-246. Policy and purpose. (1) It is the policy and intent of the legislature that lottery proceeds received by a person who redeems a ticket or chance to win a prize on a ticket or chance purchased in Montana under the provisions of Title 23, chapter 7, is Montana source income, notwithstanding the residence of the person or entity that redeems the ticket. This policy statement affirms that the legislature has always considered lottery proceeds to be Montana source income.

(2) The purpose of 15-30-247 is to ensure that lottery proceeds that are Montana source income are subject to the withholding tax under the individual income tax laws of the state.

History: En. Sec. 1, Ch. 488, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 488, L. 1993, provided: "[This act] is effective on passage and approval [approved April 22, 1993] and applies retroactively, within the meaning of 1-2-109, to all lottery proceeds subject to the withholding tax regardless of when the prize was won."

15-30-247. Withholding of lottery winnings. (1) When making any payment of winnings that are subject to withholding, the state lottery commission, created under Title 23, chapter 7, part 2, shall deduct and withhold from the payment a tax in an amount equal to 10% of the payment.

(2) For the purposes of this section, the phrase "winnings that are subject to withholding" means the proceeds in excess of $5,000 won from a lottery game operated pursuant to Title 23, chapter 7.

(3) Every person who receives a payment of winnings that are subject to withholding shall furnish the state lottery commission with a signed statement containing the name, address, and taxpayer identification number of the recipient and of every person entitled to any portion of the payment. The

signed statement must be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing.

History: En. Sec. 2, Ch. 488, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 488, L. 1993, provided: "[This act] is effective on passage and approval [approved April 22, 1993] and applies retroactively, within the meaning of 1-2-109, to all lottery proceeds subject to the withholding tax regardless of when the prize was won."

Part 3
Administration and Collection

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-30-301. Information agents' duties. (1) Every information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the taxable year upon which no withholding tax has been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code of 1965 or as that section may be amended;

(b) all interest income in excess of $10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer.

(2) The return should be made under the regulations and in the form and manner prescribed by the department; provided, however, that for ease of reporting, the form shall be as nearly identical to the comparable federal form as possible.

History: En. Sec. 13, Ch. 181, L. 1933; re-en. Sec. 2295.13, R.C.M. 1935; amd. Sec. 7, Ch. 260, L. 1955; amd. Sec. 1, Ch. 205, L. 1967; amd. Sec. 170, Ch. 516, L. 1973; R.C.M. 1947, 84-4913; amd. Sec. 5, Ch. 289, L. 1989; amd. Sec. 1, Ch. 89, L. 1991.

Cross-References

Annual statement by employer sufficient for compliance, 15-30-207.

15-30-302. Oaths administered by director of revenue and designated employees. The director and each employee designated by him may administer an oath to any person or take the acknowledgment of any person in respect to any report or return required by or pursuant to this chapter or by the rules of the department.

History: En. Sec. 21, Ch. 181, L. 1933; re-en. Sec. 2295.21, R.C.M. 1935; amd. Sec. 101(a), Ch. 405, L. 1973; R.C.M. 1947, 84-4921.

15-30-303. Confidentiality of tax records. (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding $1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of the state, the offender must be dismissed from office and may not hold any public office in this state for a period of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing information from employers' payroll withholding reports to:

(a) the department of labor and industry to prevent and detect fraud and abuse under the unemployment compensation program; or

(b) the state fund to prevent and detect fraud and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any

individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) The department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of social and rehabilitation services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation the ratio of gross farm income to total gross income based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223, provided that notice to the applicant has been given as provided in 15-70-223. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

History: En. Sec. 30, Ch. 181, L. 1933; re-en. Sec. 2295.30, R.C.M. 1935; amd. Sec. 1, Ch. 110, L. 1951; amd. Sec. 1, Ch. 253, L. 1967; amd. Sec. 180, Ch. 516, L. 1973; amd. Sec. 1, Ch. 346, L. 1977; R.C.M. 1947, 84-4931; amd. Sec. 1, Ch. 131, L. 1985; amd. Sec. 2, Ch. 358, L. 1989; amd. Sec. 1, Ch. 416, L. 1989; amd. Sec. 2, Ch. 20, L. 1993; amd. Sec. 1, Ch. 245, L. 1993; amd. Sec. 4, Ch. 410, L. 1993; amd. Sec. 4, Ch. 520, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 20 in (1), near beginning in exception clause, inserted reference to subsections (7) and (8) and after "unlawful" deleted "for the department or any deputy, assistant, agent, clerk, or other officer or employee"; in (1)(a), in two places, inserted "individual"; inserted (8)(f) regarding the furnishing of individual tax information to the Legislative Fiscal Analyst and the Office of Budget and Program Planning; and made minor changes in style.

Chapter 245 inserted (8)(g) allowing the Department of Transportation access to certain tax information to determine whether gasoline use qualifies as agricultural use for refund purposes; and made minor changes in style. Amendment effective April 1, 1993.

Chapter 410 inserted (6) stating that the section may not be construed to prohibit release of certain information by the Department to the Department of Labor and Industry and to the state workers' compensation fund to detect fraud and abuse in the unemployment compensation and workers' compensation programs; inserted (8)(c) requiring the Department to give the Department of Labor and Industry certain information for purposes of preventing fraud and abuse in unemployment and workers' compensation programs; and made minor changes in style.

Chapter 520 in (3)(c), after "15-30-311", deleted "and 15-30-322". Amendment effective April 24, 1993.

Style changes were slightly different in the chapters. In each case, the codifier chose the most appropriate.

Effective Dates — Applicability: Section 3, Ch. 245, L. 1993, provided: "[This act] is effective on passage and approval and applies to claims for refunds filed on or after [the effective date of this act]." Effective April 1, 1993.

Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

Cross-References

Audit of public assistance records, 53-2-104.

Misuse of public assistance information unlawful, 53-2-105.

Penalty for misuse of public assistance information, 53-2-106.

Public assistance — investigations by Department of Justice, Title 53, ch. 2, part 5.

15-30-304. Furnishing copy of federal return, copies of federal corrections, and filing amended return required. Every taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year which he has filed or may file with the federal government showing his net income and how obtained and the several sources from which derived. If the amount of a taxpayer's taxable income is changed or corrected by the United States internal revenue service or other competent authority, the taxpayer shall report such change or correction to the department within 90 days after receiving notice thereof. If a taxpayer files an amended federal income tax return changing or correcting his federal taxable income for any taxable year, he shall also file an amended return with the department within 90 days thereafter. The department shall supply all necessary forms and shall, upon the request of the taxpayer, return all such forms to the taxpayer after they have been examined by the department.

History: **En. 84-4938 by Sec. 11, Ch. 260, L. 1955; amd. Sec. 2, Ch. 61, L. 1967; amd. Sec. 182, Ch. 516, L. 1973; R.C.M. 1947, 84-4938.**

Cross-References

Suspension of Statute of Limitations for failure to notify Department of change in federal return, 15-30-146.

15-30-305. Department rules. The department is hereby authorized to make such rules and to require such facts and information to be reported as it may deem necessary to enforce the provisions of this chapter.

History: **En. Sec. 29, Ch. 181, L. 1933; re-en. Sec. 2295.29, R.C.M. 1935; amd. Sec. 179, Ch. 516, L. 1973; R.C.M. 1947, 84-4930.**

15-30-306. Agreements with contiguous states. The department of revenue may, in its discretion, enter into reciprocal agreements with the taxing authorities of states contiguous to the state of Montana which tax the income of Montana residents earned in that state to provide that the tax imposed by this chapter on income derived by persons who are nonresidents of this state is not payable when such other state or states agree to grant similar treatment to residents of Montana.

History: **En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(18).**

15-30-307. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any person relating to the liability of such person in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

History: En. 84-4959 by Sec. 2, Ch. 353, L. 1977; R.C.M. 1947, 84-4959.

15-30-308 and 15-30-309 reserved.

15-30-310. Authority to collect tax — offset — hearing. (1) The department shall collect taxes that are delinquent as determined under this chapter.

(2) To collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a hearing on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

(5) The department must provide the taxpayer with notice of the right to request a hearing under the contested case procedures of Title 2, chapter 4, on the matter of the offset action or the department intent to file a claim on behalf of a taxpayer. A request for hearing must be made within 30 days of the date of the notice and such hearing, if requested, must be held within 20 days.

History: En. Sec. 1, Ch. 160, L. 1985.

Cross-References

Function of State Auditor in offset of taxes against refunds or other amounts owing, 17-4-105.

15-30-311. Warrant for distraint. If any tax imposed by this chapter or any portion of such tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

History: En. Sec. 26, Ch. 181, L. 1933; re-en. Sec. 2295.26, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1947; amd. Sec. 176, Ch. 516, L. 1973; R.C.M. 1947, 84-4928; amd. Sec. 1, Ch. 167, L. 1979; amd. Sec. 12, Ch. 439, L. 1981; amd. Sec. 1, Ch. 570, L. 1981.

Cross-References

Warrant for withheld taxes, 15-30-208.

15-30-312. Jeopardy assessments. (1) If the department finds that the assessment or collection of the tax or a deficiency for any taxable year will be jeopardized in whole or in part by delay, it may mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the department may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated.

(2) A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once, including the issuance of a warrant for distraint as provided in Title 15, chapter 1, part 7.

History: En. 84-4928.1 by Sec. 2, Ch. 212, L. 1967; amd. Sec. 177, Ch. 516, L. 1973; R.C.M. 1947, 84-4928.1; amd. Sec. 13, Ch. 439, L. 1981.

Cross-References

Jeopardy assessment for withheld taxes, 15-30-204.

15-30-313. Soldiers' and sailors' relief. (1) The collection from any person in the military service, as defined by the Soldiers' and Sailors' Civil Relief Act of 1940, effective October 17, 1940, as amended October 6, 1942, of any tax prescribed by the state on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than 6 months after the termination of his period of military service if such person's ability to pay such tax is materially impaired by reason of such service.

(2) No interest on any amount of tax, collection of which is deferred for any period under this section and 15-30-314, and no penalty for nonpayment of such amount during such period shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the payment of such tax by any lawful means shall be suspended for the period of military service of any individual for whom the collection of such tax is deferred under this section and for an additional period of 1 year beginning with the day following the period of military service.

History: En. Sec. 1, Ch. 181, L. 1943; amd. Sec. 5, Ch. 34, L. 1977; R.C.M. 1947, 84-4926.

Cross-References

Special consideration allowed military personnel and veterans, Art. II, sec. 35, Mont. Const.

15-30-314. Stay of enforcement against military personnel. (1) Any such person may, during his period of military service or within 6 months thereafter, apply to a court for relief in respect of any tax obligation or any tax liability incurred by such person prior to his period of military service or in respect of any such obligation or liability, whether falling due prior to or during his period of military service. Any district court of the state after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected by reason of his military service, may grant a stay of the enforcement thereof during the applicant's period of military service and from the date of termination of such period of military service or from the date of application, if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of military service or from the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such tax obligation or tax liability or assessment if paid when due and subject to such other terms as may be just.

(2) When any court has granted a stay as provided in this section, no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of the failure to comply with the terms or conditions of the tax obligation, tax liability, or assessment in respect of which such stay was granted.

History: En. Sec. 2, Ch. 181, L. 1943; R.C.M. 1947, 84-4927.

Cross-References

Special consideration allowed military personnel and veterans, Art. II, sec. 35, Mont. Const.

15-30-315. Repealed. Sec. 54, Ch. 439, L. 1981.

History: En. Sec. 1, Ch. 130, L. 1965; amd. Sec. 193, Ch. 516, L. 1973; R.C.M. 1947, 84-4958.

15-30-316. Failure to file return or report — order to show cause — action by department. (1) Whenever a taxpayer fails to file a return or report within 90 days after the due date and refuses to file the return or report within 60 days after written notification or demand from the department, the department may file a petition in the district court for an order to show cause.

(2) The written notification or demand:

(a) shall recite the facts and circumstances showing the failure of the taxpayer to file the return or report;

(b) must be sent by certified mail to the address of the taxpayer as shown on the records of the department and to any other address of the taxpayer known to the department; and

(c) shall inform the taxpayer that upon failure to receive the return or report within 60 days from the date of the notification or demand the department will seek an order to show cause in district court.

(3) A petition filed under the authority of subsection (1) must be verified and shall set forth in detail the facts and circumstances showing the failure of the taxpayer to file the return or report and the response, if any, of the taxpayer to the written notification and demand.

(4) When a verified petition is filed under the authority of subsection (1), the court shall review the petition to determine if the department has made a prima facie showing that an order to show cause should be issued and, if such a showing has been made, shall issue an order directed to the taxpayer to file the return or report within 30 days of the order, or to show cause, at a special time and place, why the return or report should not be filed.

(5) A copy of the petition and a certified copy of the order must be served upon the taxpayer. Service may be made pursuant to the provisions of Rule 4D(1)(b), M.R.Civ.P. If the taxpayer fails to acknowledge service, the sheriff shall serve a copy of the petition and a certified copy of the order on the taxpayer pursuant to Rule 4D(2) or (3), M.R.Civ.P.

(6) At the hearing on the order to show cause, evidence produced that the department's records show that the return or the report has not been filed is prima facie evidence that the return or report has not been filed.

(7) Upon finding by a preponderance of the evidence that the taxpayer has not filed the return or report as required by law, the court may issue a further order compelling the filing of the return or report, and the taxpayer's failure to comply with the order may thereafter be proceeded against as a contempt.

History: En. Sec. 1, Ch. 35, L. 1985.

Cross-References

Contempt proceedings, Title 3, ch. 1, part 5.

Verification of pleadings, 25-4-203.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Prima facie evidence defined, 26-1-102.

15-30-317 through 15-30-320 reserved.

15-30-321. Penalties for violation of chapter. (1) If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to file a return of income on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be imposed a penalty of 5% of any balance of tax unpaid with respect to such return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than $5. The department may abate the penalty if the taxpayer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part. If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to pay any tax on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be added to the tax a penalty of 10% of said tax, but not less than $5, and interest shall accrue on the tax at the rate of 9% per annum for the entire period it remains unpaid. The department may abate the penalty if the taxpayer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.

(2) If any person fails, purposely or knowingly violating any requirement imposed by this chapter, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this chapter, there shall be added to the tax an additional amount equal to 25% thereof, but such additional amount shall in no case be less than $25, and interest at 1% for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who, with intent to evade any tax or any requirement of this chapter or any lawful requirement of the department thereunder, purposely or knowingly, fails to pay the tax or to make, render, or sign any return or to supply any information within the time required by or under the provisions of this chapter or who, with like intent, purposely or knowingly makes, renders, or signs any false or fraudulent return or statement or supplies any false or fraudulent information shall be liable to a penalty of not more than $1,000, to be recovered by the attorney general in the name of the state by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall upon conviction be fined not to exceed $1,000 or be imprisoned not to exceed 1 year, or both, at the discretion of the court.

(4) With respect to the imposition of a civil penalty, evidence produced by the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

History: En. Sec. 24, Ch. 181, L. 1933; re-en. Sec. 2295.24, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1955; amd. Sec. 3, Ch. 201, L. 1963; amd. Sec. 2, Ch. 347, L. 1969; amd. Sec. 175, Ch. 516, L. 1973; amd. Sec. 1, Ch. 65, L. 1975; R.C.M. 1947, 84-4924; amd. Sec. 3, Ch. 648, L. 1979; amd. Sec. 49, Ch. 370, L. 1987.

Cross-References

Penalty provisions for violations of Dangerous Drug Tax Act, 15-25-113.

Penalties applicable to withholding requirements, 15-30-209.

Penalties applicable to estimated tax requirements, 15-30-241.

15-30-322. Repealed. Sec. 5, Ch. 520, L. 1993.

History: En. Sec. 27, Ch. 181, L. 1933; re-en. Sec. 2295.27, R.C.M. 1935; amd. Sec. 178, Ch. 516, L. 1973; R.C.M. 1947, 84-4929.

15-30-323. Penalty for deficiency. (1) If the payment required by 15-30-142(8) is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, there must be added to the amount of the deficiency 5% of the deficiency. However, a deficiency penalty may not be less than $2. Interest must be computed at the rate of 9% per annum or fraction of a year on the additional assessment. Except as otherwise expressly provided in this subsection, the interest must in all cases be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest on the tax due at the rate of 9% per annum from the time when the return was originally required to be filed to the time of payment.

History: En. Sec. 14, Ch. 181, L. 1933; re-en. Sec. 2295.14, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969; amd. Sec. 1, Ch. 450, L. 1973; amd. Sec. 171, Ch. 516, L. 1973; amd. Sec. 1, Ch. 159, L. 1977; R.C.M. 1947, 84-4914(part); amd. Sec. 3, Ch. 477, L. 1981; amd. Sec. 13, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 near beginning of (1) substituted "15-30-142(8)" for "15-30-142(6)"; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-30-324. Time limitations for prosecution. A prosecution for an offense under 15-30-321 must be commenced within 5 years after the offense is committed.

History: En. Sec. 4, Ch. 648, L. 1979.

15-30-325 through 15-30-330 reserved.

15-30-331. Certified copies of tax returns to taxpayer — fee. (1) Certified copies of returns filed for income tax under 15-30-144 may be furnished by the department of revenue to the taxpayer or his duly authorized representative upon payment of 50 cents for each page.

(2) All moneys collected under this section shall be required to reimburse the department for costs involved in the preparation of the copies. All such moneys collected shall go into the general fund.

(3) The provisions of this section shall apply to all returns on file and all returns to be filed hereafter.

History: **(1)En. Sec. 1, Ch. 187, L. 1965; amd. Sec. 20, Ch. 516, L. 1973; Sec. 84-732, R.C.M. 1947; (2)En. Sec. 3, Ch. 187, L. 1965; amd. Sec. 22, Ch. 516, L. 1973; Sec. 84-734, R.C.M. 1947; (3)En. Sec. 4, Ch. 187, L. 1965; Sec. 84-735, R.C.M. 1947; R.C.M. 1947, 84-732(part), 84-734(part), 84-735.**

CHAPTER 31

CORPORATION LICENSE OR INCOME TAX

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15-31-601. Repealed.
15-31-602. Repealed.
15-31-603. List of corporations furnished by secretary of state.
15-31-604 through 15-31-607. Repealed.

Part 7 — Banks and Savings and Loan Associations

15-31-701. Department of revenue — special duties for transmitting corporation license tax revenues collected from banks or savings and loan associations to counties.
15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations.
15-31-703. Moneyed capital and shares of banks exempt.

Chapter Cross-References

Reservation of power to tax certain persons and property within land purchased by the United States under Art. I, sec. 8, part 17, U.S. Const.; 2-1-202.

Reservation of power to tax certain persons and property within Glacier National Park, 2-1-205.

Reservation of power to tax certain persons and property within land ceded to the United States for Fort Peck Dam, 2-1-209.

Reservation of power to tax certain persons and property within land purchased by the United States for national forest purposes, 2-1-210.

Capital gains or dividend income exempt — investment in small business investment company, Title 15, ch. 33, part 1.

Income derived by municipality from property acquired for airport purposes exempt, 67-10-406.

Income derived by airport authority from airport property exempt, 67-11-306.

Tax on companies regulated by the Public Service Commission to fund Consumer Counsel, 69-1-223.

Income tax deduction for land sale to beginning farmers, 80-12-211.

Tax-exempt agricultural loan authority bonds, 80-12-305.

Tax credits for investment in Montana Capital Company, 90-8-202, 90-8-203.

Part 1

Corporation License Tax Rate and Return

15-31-101. Organizations subject to tax. (1) The term "corporation" includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States.

(2) The terms “engaged in business” and “doing business” both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548).

History: (1), (3)En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; Sec. 84-1501, R.C.M. 1947; (2)En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; Sec. 84-1504, R.C.M. 1947; (4)En. Secs. 1, 3, Ch. 23, L. 1971; Secs. 84-1501.6, 84-1501.7, R.C.M. 1947; R.C.M. 1947, 84-1501(part), 84-1501.6(part), 84-1501.7(part), 84-1504(part); amd. Sec. 2, Ch. 634, L. 1979; amd. Sec. 3, Ch. 664, L. 1979; amd. Sec. 1, Ch. 622, L. 1987; amd. Sec. 4, Ch. 659, L. 1987; amd. Sec. 1, Ch. 9, Sp. L. June 1989.

Cross-References

Election of small business corporation exemption, Title 15, ch. 31, part 2.

Taxation of corporations operating free-trade zone, 30-15-104.

Payment of taxes on change from a state to a national banking corporation, 32-1-363.

Taxes on banks that have ceased to do business, 32-1-509.

Reciprocal taxation of building and loan associations, 32-2-105.

Taxation of credit unions, Title 32, ch. 3, part 9.

Taxation of insurers preempted by state, 33-2-707.

Certificate required from Department prior to corporate dissolution, 35-1-944.

Business trusts subject to tax, 35-5-205.

Certificate required from Department prior to reinstatement of dissolved corporation, 35-6-104.

15-31-102. Organizations exempt from tax — unrelated business income not exempt. (1) Except as provided in subsection (3), there shall not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep;

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes such an election under federal law, each person who at any time is a shareholder of such corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit and no part of the net income of which inures to the benefit of any member, but is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller.

(2) In determining the license fee to be paid under this part, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than $100 shall be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section must file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; R.C.M. 1947, 84-1501(part); amd. Sec. 1, Ch. 267, L. 1979; amd. Sec. 1, Ch. 284, L. 1979; amd. Sec. 1, Ch. 537, L. 1981; amd. Sec. 1, Ch. 604, L. 1985.

Cross-References

Small business corporation exemption, Title 15, ch. 31, part 2.

Farm mutual insurers subject only to certain taxes, 33-4-409.

Insurance guaranty association exemptions, 33-10-107.

Life and health insurance guaranty association, 33-10-208.

Exemption of rural electric and telephone cooperatives, 35-18-503.

Exemption for water users' association, 85-6-108.

15-31-103. Research and development firms exempt from taxation — application. (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means a research and development firm's taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or his agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include, at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation in 35-1-216;

(iii) the address of its initial registered office required for the purpose of incorporation as required in 35-1-216;

(iv) the date the articles of incorporation were filed with the secretary of state as required in 35-1-215; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter.

History: En. Sec. 1, Ch. 659, L. 1987; amd. Sec. 185, Ch. 368, L. 1991.

15-31-104 through 15-31-110 reserved.

15-31-111. Return to be filed. (1) Every corporation subject to the license fee imposed under this chapter shall for each taxable period render a true and accurate return of its net income for the taxable period in the manner and form to be prescribed by the department of revenue and containing such facts, data, and information as are appropriate and in the opinion of the department necessary to determine the correctness of the net income returned and to carry out the provisions of this chapter. The return shall be signed by one of the following: the president, the vice-president, the treasurer, the assistant treasurer or chief accounting officer.

(2) If the corporation is reporting on a calendar year basis, the return shall be filed with the department on or before May 15 following the close of the calendar year, and if reporting on a fiscal year basis, the return shall be filed with the department on or before the 15th day of the 5th month following the close of its fiscal year. Upon application, a corporation shall be allowed an automatic extension of time for filing its return of 1 to 6 months following the date prescribed for filing of its tax return. The application is to be made on such forms as the department shall prescribe.

(3) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of a corporation subject to the license fee imposed by this chapter, such receiver, trustee, or assignee shall make the return in the same manner and form as such corporation is hereinbefore required to make return, and any license fee due on the basis of such returns made by the receiver, trustee, or assignee shall be assessed and collected in the same manner as if assessed directly against the corporation of whose business or property they have custody and control and shall be paid by such receiver, trustee, or assignee out of the property of the company in his hands, prior to the claims of creditors or stockholders.

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; R.C.M. 1947, 84-1504(part).

Cross-References

Certified copies of return available, 15-31-551.

15-31-112. Taxable period. The license fee shall be computed on the basis of the corporation's total net income for the taxable period. The corporation's taxable period shall be its taxable year for federal income tax purposes. In the event a corporation changes its taxable year, it shall promptly notify the department of revenue.

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; R.C.M. 1947, 84-1504(1).

15-31-113. Gross income and net income. (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:

(a) including:

(i) interest exempt from federal income tax;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) No corporation is exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is

subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year.

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1923; re-en. Sec. 2299, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973; amd. Sec. 1, Ch. 161, L. 1975; R.C.M. 1947, 84-1504(part); amd. Sec. 2, Ch. 483, L. 1981.

Cross-References

Railroad rehabilitation revenue bonds exemption, 60-11-1110.

Rolling stock revenue bonds exemption, 60-11-1210.

Payment received under Title 70, ch. 31, for relocation because of federally assisted program not income, 70-31-106.

Conservancy district bonds exemption, 85-9-626.

Board of Housing bonds exemption, 90-6-125.

15-31-114. Deductions allowed in computing income. In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made. No depreciation or amortization deduction shall be allowed on a title plant as defined in 33-25-105(15).

(b) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling ex-

penses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this part.

(5) (a) Taxes paid within the year, except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

(b) Taxes deductible under this part shall be construed to include taxes imposed by any county, school district, or municipality of this state.

(6) That portion of an energy-related investment allowed as a deduction under 15-32-103.

(7) (a) Except as provided in subsection (b), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(b) The public service commission shall not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(8) In lieu of the deduction allowed under subsection (7), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of (b) of this subsection (8).

History: En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921; re-en. Sec. 2297, R.C.M. 1921; amd. Sec. 2, Ch. 166, L. 1933; re-en. Sec. 2297, R.C.M. 1935; amd. Sec. 1, Ch. 133, L. 1947; amd. Sec. 1, Ch. 263, L. 1959; amd. Sec. 1, Ch. 235, L. 1971; amd. Sec. 1, Ch. 358, L. 1971; amd. Sec. 1, Ch. 320, L. 1973; amd. Sec. 54, Ch. 516, L. 1973; amd. Sec. 1, Ch. 54, L. 1974; amd. Sec. 3, Ch. 405, L. 1977; amd. Sec. 4, Ch. 576, L. 1977; R.C.M. 1947, 84-1502; amd. Sec. 3, Ch. 634, L. 1979; amd. Sec. 1, Ch. 574, L. 1981; amd. Sec. 21, Ch. 614, L. 1981; amd. Sec. 1, Ch. 447, L. 1983; amd. Sec. 11, Ch. 516, L. 1985; amd. Sec. 12, Ch. 611, L. 1987; amd. Sec. 1, Ch. 538, L. 1989; amd. Sec. 4, Ch. 617, L. 1989.

Cross-References

Individual income tax — net operating loss — computation, 15-30-117

Deduction for energy-conserving investments, 15-32-103.

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

15-31-115. Reaffirmation of bond income inclusion in definition of net income for corporation license tax purposes. Notwithstanding the provisions of any other law, the income from bonds or other obligations issued by any state or political subdivision of a state are included in gross and net income for purposes of the corporation license tax. Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of 1979, which law repealed the exclusion of such income from the tax base of the corporation license tax.

History: En. Sec. 3, Ch. 673, L. 1983.

15-31-116. Repealed. Sec. 1, Ch. 125, L. 1989.

History: En. Sec. 1, Ch. 673, L. 1983.

15-31-117. Tax deductibility. (1) The amount of contributions made by a small business to its independent liability fund as defined in 33-27-103 is deductible to that small business on its Montana corporate license tax or corporate income tax return for the taxable year in which the contributions are made to the fund.

(2) Administrative costs under 33-27-117(1), except those paid from the principal of an independent liability fund, are deductible on the Montana corporate license tax or corporate income tax return for the taxable year in which they are paid or accrued.

(3) Income on the money, assets, and investments in an independent liability fund as defined in 33-27-103 may be contributed to the fund. If it is not so contributed, it is taxable in accordance with the applicable provisions of this chapter.

History: En. Secs. 10, 11, 15, Ch. 564, L. 1987.

15-31-118. Taxable liability on termination of independent liability fund. If an independent liability fund established pursuant to Title 33, chapter 27, is terminated as provided in 33-27-119, the income from the principal distributed pursuant to 33-27-119(2) is taxable to that person or persons under the applicable provisions of this chapter.

History: En. Sec. 18, Ch. 564, L. 1987.

15-31-119. Net operating losses — carryovers and carrybacks. (1) The net operating loss deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss carrybacks to the taxable period.

(2) The term “net operating loss” means the excess of the deductions allowed by this section over the gross income, with the modifications specified in subsection (6).

(3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the loss.

(4) A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating loss carryover to each of the seven taxable periods following the taxable period of the loss.

(5) Except as provided in subsection (11), the portion of the loss that must be carried to each of the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net income for each of the prior taxable periods to which the loss was carried. For purposes of the preceding sentence, the net income for the prior taxable period must be computed with the modification specified in subsection (6)(b) and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed may not be considered to be less than zero.

(6) The modifications referred to in subsection (2) are as follows:

(a) net operating loss deduction may not be allowed.

(b) The deduction for depletion may not exceed the amount that would be allowable if computed under the cost method.

(c) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(7) A net operating loss deduction must be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(8) In the case of a merger of corporations, the surviving corporation may not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(10) The net operating loss deduction may not be allowed with respect to taxable periods that ended on or before December 31, 1970, but must be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire carryback period. If the election is made, the loss may be carried forward only. The election must be made on or before the date on which the return is due, including any extension of the due date, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made.

History: En. Sec. 3, Ch. 538, L. 1989.

15-31-120 reserved.

15-31-121. *(Temporary for tax year 1993)* **Rate of tax — minimum tax — surtax.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 is:

(a) 7.08% of the first $500,000 of net income for the taxable period; and

(b) 7.57% of all net income in excess of $500,000 for the taxable period.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 is:

(a) 7.33% of the first $500,000 of taxable net income for the taxable period; and

(b) 7.82% of all net income in excess of $500,000 for the taxable period.

(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $100.

15-31-121. *(Effective for tax year 1994 and thereafter)* **Rate of tax — minimum tax — surtax.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 is:

(a) 6 3/4% of the first $500,000 of net income for the taxable period; and

(b) 7 1/4% of all net income in excess of $500,000 for the taxable period.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 is:

(a) 7% of the first $500,000 of taxable net income for the taxable period; and

(b) 7.5% of all net income in excess of $500,000 for the taxable period.

(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $100.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; R.C.M. 1947, 84-1501(part); amd. Sec. 7, Ch. 616, L. 1987; amd. Sec. 90, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 15, Sp. L. July 1992; amd. Sec. 14, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: (Temporary version) Chapter 634 in (1)(a) substituted "7.08% of the first $500,000" for "6 3/4% of all"; in (1)(b) substituted "7.57% of all net income in excess of $500,000 for the taxable period" for "The rate set forth in this subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971"; in (2)(a) substituted "7.33% of the first $500,000" for "7% of all"; inserted (2)(b) that read: "(b) 7.82% of all net income in excess of $500,000 for the taxable period"; in (3) increased minimum tax from $50 to $100; deleted (4) that read: "(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add, as a surtax for tax year 1992, 2.3% of the tax liability and, as a surtax for tax year 1993, 4.7% of the tax liability, and the amount so derived is the amount due the state"; deleted (5) providing that the additional tax collected under subsection (4) be deposited in the state general fund; and made minor changes in style. Amendment effective May 11, 1993.

(Version effective for tax year 1994 and thereafter) Chapter 634 in (1)(a), before "net income", substituted "the first $500,000" for "all"; in (1)(b) substituted "7 1/4% of all net income in excess of $500,000 for the taxable period" for "The rate set forth in this subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971"; in (2)(a) substituted "7% of the first $500,000" for "7% of all"; inserted (2)(b) that read: "(b) 7.5% of all net income in excess of $500,000 for the taxable period"; in (3) increased minimum tax from $50 to $100; deleted (4) that read: "(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add, as a surtax for tax year 1988, 4% of the tax liability, and the amount so derived is the amount due the state"; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Retroactive Applicability — Termination: Section 39(1), Ch. 15, Sp. L. July 1992, provided that this section applies to tax years beginning after December 31, 1991, and before January 1, 1994. This section terminates upon receipt of taxes for tax year 1993.

Cross-References

Credit for alternative fuel motor vehicle conversion, 15-30-164.

Investment credit, 15-31-123.

New or expanded industry credit, 15-31-124.

Tax credit for loans by certain public utilities and financial institutions for energy-saving purposes, 15-32-107.

Credit for public contractor's license fee, 15-50-207.

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

15-31-122. Alternative gross sales tax. Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every corporation deriving income from sources both within and without the state of Montana and required to file a return and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay a tax of 1/2 of 1% of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under 15-31-101 and 15-31-121. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; R.C.M. 1947, 84-1501(part).

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

15-31-123. Investment credit. (1) The purpose of this section is to allow small businesses to take an investment credit as provided for in subsection (3) and to stimulate capital investment by the small business sector.

(2) For the purposes of this section, "small business" means a business that does not have:

(a) more than 10 shareholders;

(b) a person who is not an individual (other than an estate or other than a trust described in subsection (8)) as a shareholder;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock.

(3) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended. However, rehabilitation costs as set forth under section 46(a)(2)(F) of the Internal Revenue Code of 1954, or as section 46(a)(2)(F) may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified

property defined by section 38 of the Internal Revenue Code of 1954, as amended, if the property meets all of the following qualifications:

(a) it was placed in service in Montana; and

(b) it was used for the production of Montana income.

(4) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended.

(5) Notwithstanding the provisions of subsection (4), the investment credit allowed for the taxable year may not exceed $500.

(6) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the taxable year the property was located in Montana and the denominator of which is the number of days during the taxable year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed.

(7) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended.

(8) (a) For purposes of subsection (2)(b), any of the following trusts may be a shareholder without disqualifying the business for the investment credit:

(i) a trust all of which is treated as owned by the grantor under sections 671 through 678 of the Internal Revenue Code;

(ii) a trust created primarily to exercise the voting power of stock transferred to it;

(iii) any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it.

(b) In the case of a trust described in subsection (8)(a)(ii), each beneficiary of the trust shall be treated as a shareholder.

History: En. 84-4960, 84-4961 by Secs. 1, 2, Ch. 412, L. 1977; R.C.M. 1947, 84-4960, 84-4961(part); amd. Sec. 3, Ch. 111, L. 1979; amd. Sec. 3, Ch. 520, L. 1981; amd. Sec. 2, Ch. 704, L. 1983; amd. Sec. 9, Ch. 20, L. 1985.

Cross-References

Individual investment credit, 15-30-162.

15-31-124. New or expanded industry credit — definitions. As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means the process of mechanical or chemical transformation of materials or substances into new products, as described in the standard industrial classification manual of 1972 by the office of management and budget of the United States.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state. A new corporation includes:

(i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) A new corporation does not include:

(i) a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(ii) a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which 20% or more of the ownership is held by the corporation or by the stockholders of the corporation.

History: En. 84-1520 by Sec. 2, Ch. 435, L. 1975; R.C.M. 1947, 84-1520; amd. Sec. 4, Ch. 694, L. 1991.

15-31-125. Determination of tax credit. A new or expanding manufacturing corporation may receive a license tax credit based on a percentage of wages paid its new employees within this state for a period of 3 years as follows: the first 3 years of operation of a new corporation or the first 3 years of expansion of an expanding corporation, a credit of 1% of the total new wages paid in this state, as wages are defined in 39-51-201 may be allowed. In determining total wages for an expanding corporation, only those wages paid in support of the expansion are considered in ascertaining the credit. The payroll and number of jobs of the corporation in the 12-month period immediately preceding the expansion are averaged to determine eligibility for the credit.

History: En. 84-1523 by Sec. 3, Ch. 435, L. 1975; R.C.M. 1947, 84-1523.

15-31-126. Limitation. This credit is available only to those new and expanding corporations that provide jobs within the state of Montana.

History: En. 84-1525 by Sec. 5, Ch. 435, L. 1975; R.C.M. 1947, 84-1525.

15-31-127. Department duties. The department shall determine the eligibility of a corporation for this credit, promulgate rules, prepare forms, maintain records, and perform other duties necessary to carry out 15-31-124 through 15-31-127.

History: En. 84-1524 by Sec. 4, Ch. 435, L. 1975; R.C.M. 1947, 84-1524.

15-31-128 through 15-31-130 reserved.

15-31-131. Credit for dependent care assistance. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 89(k) and 129(d)(2) through (6) of the Internal Revenue Code.

(2) (a) The amount of the credit allowed under subsection (1) is 20% of the amount paid or incurred by the employer during the taxable year, but the credit may not exceed $1,250 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code.

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) An amount paid or incurred during the taxable year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code.

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(5) If the credit allowed under subsection (1) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection.

(7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(8) If the taxpayer is an S corporation, as defined in section 1361 of the Internal Revenue Code, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(9) For purposes of the credit allowed under subsection (1):

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation, or profession in this state.

(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on January 1, 1989.

History: En. Sec. 1, Ch. 706, L. 1989; amd. Sec. 1, Ch. 416, L. 1991; amd. Sec. 17, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 at end of (6) deleted "Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121." Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Cross-References

Credit for dependent care assistance — individual income tax, 15-30-186.

15-31-132. Tax credit for providing disability insurance for employees. An employer is entitled to a credit against taxes otherwise due under this chapter for the amount of premiums for disability insurance issued under Title 33, chapter 22, part 12, and paid by the employer for his employees, subject to the following requirements:

(1) The tax credit is available only to employers who:

(a) have been in business in Montana for at least 12 months; and

(b) employ 20 or fewer employees working at least 20 hours per week.

(2) At least 50% of each employee's insurance premium is paid by the employer.

(3) Subject to the provisions of subsection (4), an employer is entitled to a tax credit for a maximum of 10 employees, computed as follows:

(a) a credit of $25 a month for each employee if the employer pays 100% of the employee's premium; or

(b) a credit equal to $25 a month multiplied by the percentage of the employee's premium paid by the employer for each employee if the employer pays less than 100% of the employee's premium.

(4) The credit may not exceed 50% of the premium cost for each employee and may not be claimed for a period of more than 36 consecutive months. A tax credit may not be granted to an employer or its successor within 10 years of the last consecutive credit claimed.

(5) The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the employer has no tax liability.

History: En. Sec. 6, Ch. 606, L. 1991.

15-31-133 and 15-31-134 reserved.

15-31-135. Contribution by small business corporation. A contribution to a general endowment fund of the Montana university system or a Montana private college by a small business corporation, as defined in 15-31-201, qualifies for the credit in 15-30-163. The credit must be attributed to shareholders, using the same proportion used to report the corporation's income or loss for Montana income tax purposes.

History: En. Sec. 2, Ch. 542, L. 1991.

15-31-136. Contribution by partnership. A contribution to a general endowment fund of the Montana university system or a Montana private college by a partnership qualifies for the credit in 15-30-163. The credit must be attributed to partners, using the same proportion used to report the partnership's income or loss for Montana tax purposes.

History: En. Sec. 3, Ch. 542, L. 1991.

15-31-137. Small business corporation and partnership credit for alternative fuel conversion. If equipment and labor costs incurred to convert a motor vehicle to operate on alternative fuel are claimed as a credit under 15-30-164 by a small business corporation, as defined in 15-31-201, or a partnership, the credit must be attributed to shareholders or partners using the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes.

History: En. Sec. 2, Ch. 617, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 617, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved May 6, 1993.

15-31-138 through 15-31-140 reserved.

15-31-141. Consolidated returns — computation and procedure — prohibition on financial institutions. (1) Corporations which are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department of revenue. For purposes of this section, a "unitary business operation" means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group are incorporated and operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) of this section are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) Any corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the department may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are

required for the purposes of this chapter, and such other information as the department may require, but excluding intercorporate stockholdings and intercorporate accounts. In case it shall appear to the department that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets, or the entire net income earned from business done in this state, the department is authorized and empowered to equitably adjust the tax in such manner as it may determine.

(6) (a) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of nonfinancial institutions, thereby distorting the true income of each financial organization.

(b) In accordance with subsection (6)(a), financial institutions are prohibited from filing consolidated returns under this section.

(7) (a) When an affiliated group elects to file a consolidated return under the provisions of this section, a corporation of the affiliated group shall file a separate return for any portion of its taxable year in which its income is not included in the consolidated return of the group. The separate return must be filed no later than the 15th day of the 5th month following the close of the taxable year for which a consolidated return of the affiliated group is filed.

(b) A 1-month to 6-month extension of time is automatically allowed for filing a return, provided that on or before the due date of the return, an application for an extension is made by the corporation. The application must be made on forms prescribed by the department.

History: En. Sec. 5, Ch. 166, L. 1933; re-en. Sec. 2303.1, R.C.M. 1935; amd. Sec. 1, Ch. 243, L. 1969; amd. Sec. 62, Ch. 516, L. 1973; R.C.M. 1947, 84-1509; (5)En. Sec. 2, Ch. 673, L. 1983; amd. Sec. 1, Ch. 451, L. 1987; amd. Sec. 1, Ch. 86, L. 1991.

15-31-142. Reports upon merger of corporations. If any corporation shall acquire, either directly, indirectly, or by merger or consolidation, the major portion of the actively employed assets of another corporation or of corporations doing any business in this state during any year or shall merge or consolidate another corporation, it shall within 30 days after such acquisition, merger, or consolidation file a report and include therein a statement showing its own and the consolidated entire net income of all such corporations for preceding calendar or fiscal years to the extent that all such income has not been used or included in measuring a corporation excise tax to this state. It shall, in any event, be liable for and pay all taxes that would have been due and payable by the corporation or corporations on or before the first day of January next succeeding had the corporation or corporations whose assets were acquired or which were merged or consolidated continued in business and as though there had been no interruption or change of the business thereof or discontinuance of the privilege of doing business. It shall also include in its own next annual return, in addition to its own entire net income, so much of the entire net income of corporations whose assets it acquired or which were merged or consolidated as shall not have been used or included in measuring a corporation excise tax to this state and shall be taxed upon such combined entire net income for the year to ensue.

History: En. Sec. 6, Ch. 166, L. 1933; re-en. Sec. 2303.2, R.C.M. 1935; R.C.M. 1947, 84-1510.

15-31-143. Return and payment on corporate dissolution. (1) It is hereby declared that the policy of the state of Montana, both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every corporation doing business in Montana shall pay an excise tax for the exercise of such privilege and that the amount of such tax shall be based upon the total taxable net income of such corporations during the entire period of time they are engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section.

(2) Therefore, every corporation which shall be dissolved or cease to do business in Montana at any time during any year shall, before such dissolution or cessation of business, make a return and pay the corporation license tax determined on the basis of its net income for the final period in which it did business in this state at the rate provided in 15-31-121 and 15-31-122, in addition to all other corporation license taxes for which such corporation may then be liable.

History: En. Sec. 7, Ch. 166, L. 1933; re-en. Sec. 2303.3, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1943; amd. Sec. 1, Ch. 60, L. 1963; R.C.M. 1947, 84-1511.

Part 2
Small Business Corporations

Part Cross-References

Tax credits for investment in a Montana capital company, 90-8-202, 90-8-203.

15-31-201. Definition of "small business corporation". (1) Except as provided in subsection (2), the term "small business corporation" means a corporation that has made a valid election under Subchapter S. of Chapter 1 of the Internal Revenue Code. A small business corporation shall attach a copy of the approved federal election with the Montana return filed for the first taxable year the federal election is effective.

(2) A corporation that would otherwise be a small business corporation may continue to be subject to the taxes imposed by Title 15, chapter 31, if all of the following conditions are met:

(a) on December 31, 1991, the corporation was doing business in Montana and had a valid Subchapter S. corporation election but had not elected to be taxed as a Montana small business corporation;

(b) after December 31, 1991, the corporation has not filed as a Montana small business corporation; and

(c) the corporation files a corporate license tax return, as required by 15-31-111, reporting all income or loss as determined under Title 15, chapter 31, and attaches a copy of the federal Subchapter S. corporate tax return.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(a), (b); amd. Sec. 1, Ch. 667, L. 1983; amd. Sec. 1, Ch. 534, L. 1989; amd. Sec. 6, Ch. 807, L. 1991.

Compiler's Comments

Conditional Grandfather Clause for Certain Montana Shareholders of Foreign Corporations That Have Elected Subchapter S. Corporation Status for Federal Tax Purposes: Section 11, Ch. 807, L. 1991, provided: "A

Montana taxpayer who is a shareholder in a corporation that is not doing business in Montana and that has elected subchapter S. corporation status for federal tax purposes may apply 15-30-111(3) as it read in 1989 for all tax years beginning on or before December 31, 1996, if the following conditions are met:

(1) The taxpayer can establish by substantial, credible evidence that the department of revenue gave the taxpayer advice concerning the application of 15-30-111(3) to the taxpayer's facts and circumstances.

(2) The taxpayer can establish by substantial, credible evidence that he relied on that advice to his detriment."

15-31-202. Small business corporation not subject to chapter. (1) A small business corporation is not subject to the taxes imposed by this chapter. The corporate net income or loss of the corporation is included in the stockholders' adjusted gross income as defined in 15-30-111.

(2) Each small business corporation is required to pay the minimum fee of $25 required by 15-31-204.

History: En. Sec. 2, Ch. 122, L. 1959; amd. Sec. 53, Ch. 516, L. 1973; amd. Sec. 1, Ch. 34, L. 1977; amd. Sec. 2, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.2; amd. Sec. 22, Ch. 581, L. 1979; amd. Sec. 2, Ch. 667, L. 1983; amd. Sec. 7, Ch. 807, L. 1991; amd. Sec. 15, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 in (2) increased minimum fee from $10 to $25. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Cross-References

Adjusted gross income when corporation elects under federal law but not state, 15-30-111.

15-31-203. Small business option unavailable on dissolution — exception. In the case of corporation dissolution, no benefits may be taken under the "small business act" or under any law or regulation shifting the tax to be paid from the corporation to the shareholders unless all shareholders agree to assume personal income tax liability the same as they would bear if they were residents of this state.

History: En. Sec. 2, Ch. 60, L. 1963; R.C.M. 1947, 84-1501.3.

15-31-204. Minimum fee of small business corporations unaffected. Notwithstanding the provisions of 15-31-121, small business corporations shall pay a minimum fee of $25.

History: En. Sec. 2, Ch. 11, Ex. L. 1969; R.C.M. 1947, 84-1501.5; amd. Sec. 8, Ch. 807, L. 1991; amd. Sec. 16, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 increased minimum fee from $10 to $25. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-31-205. Repealed. Sec. 5, Ch. 667, L. 1983.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(c).

15-31-206. Repealed. Sec. 5, Ch. 667, L. 1983.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(d).

15-31-207. Repealed. Sec. 5, Ch. 667, L. 1983.

History: En. 84-1501.1 by Sec. 1, Ch. 122, L. 1959; amd. Sec. 1, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.1(e).

15-31-208. Repealed. Sec. 10, Ch. 807, L. 1991.

History: En. Sec. 3, Ch. 667, L. 1983; amd. Sec. 2, Ch. 534, L. 1989.

15-31-209. Termination and revocation. If the election under the provisions of Subchapter S is either terminated or revoked for federal purposes, the corporation must notify the department within 30 days of such termination or revocation. The department may terminate an election at any time if it discovers the corporation does not qualify as a small business corporation as provided for under the provisions of Subchapter S of the Internal Revenue Code of 1954.

History: En. Sec. 4, Ch. 667, L. 1983.

Part 3

Allocation and Apportionment of Income

15-31-301. Corporations subject to allocation and apportionment. (1) Any corporation having income from business activity which is taxable both within and without this state shall allocate and apportion its net income as provided in this part.

(2) A corporation engaged in a unitary business within and without Montana must apportion its business income as provided for under 15-31-305. A business is unitary when the operation of the business within the state is dependent upon or contributory to the operation of the business outside the state or if the units of the business within and without the state are closely allied and not capable of separate maintenance as independent businesses.

(3) A corporation not engaged in a unitary business must allocate its business income by means of separate accounting methods, provided its books and records are so kept that the income and expenses attributable to business operations within the state can be properly segregated from total income and expense. If the corporation's books and records do not permit such proper segregation, its business income must be apportioned according to the provisions of 15-31-305.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(1).

15-31-302. Definitions. (1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(4) "Nonbusiness income" means all income other than business income.

(5) "Sales" means all gross receipts of the taxpayer not allocated under 15-31-304.

(6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(2).**

15-31-303. When taxable in another state. For the purposes of allocation and apportionment of income, a corporation is taxable in another state if:

(1) by reason of the corporation's business activities carried on in that state it is subjected to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, the state does or does not subject the taxpayer to a net income tax.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(3); amd. Sec. 10, Ch. 20, L. 1985.**

15-31-304. Allocation of nonbusiness income. (1) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (2) through (5) of this section.

(2) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(3) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(5) (a) Patent and copyright royalties are allocable to this state if and to the extent that:

(i) the patent or copyright is utilized by the payer in this state; or

(ii) the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(4) thru (8).

15-31-305. Apportionment of business income. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is 3.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(9).

15-31-306. Definition of property factor. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state in the production of business income during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in the production of business income during the tax period.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(10).

15-31-307. Values used for property factor. (1) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(2) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if

reasonably required to reflect properly the average value of the taxpayer's property.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(11), (12).

15-31-308. Definition of payroll factor. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation attributable to the production of business income and the denominator of which is the total amount paid everywhere during the tax period for compensation attributable to the production of business income.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(13).

15-31-309. Payroll factor for compensation in this state. Compensation is paid in this state if:

(1) the individual's service is performed entirely within the state;

(2) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(3) some of the service is performed in the state and:

(a) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(b) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(14).

15-31-310. Definition of sales factor. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

History: En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(15).

15-31-311. Sales factor for sales in this state. (1) Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) the purchaser is the United States government; or

(ii) the taxpayer is not taxable in the state of the purchaser.

(2) Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(16), (17).**

15-31-312. Apportionment formula — relief provisions. If the allocation and apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting, provided the taxpayer's activities in this state are separate and distinct from its operations conducted outside this state and are not a part of a unitary business operation conducted within and without this state. For purposes of this part, a "unitary business" is one in which the business conducted within the state is dependent upon or contributory to the business conducted outside this state or if the units of the business within and without this state are closely allied and not capable of separate maintenance as independent businesses.

(2) the exclusions of any one or more of the factors;

(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(18).**

15-31-313. Rules. The department of revenue shall prescribe regulations to carry out this part and shall publish such regulations and amendments thereto.

History: **En. Sec. 3, Ch. 166, L. 1933; re-en. Sec. 2297.1, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974; R.C.M. 1947, 84-1503(19).**

15-31-314 through 15-31-320 reserved.

15-31-321. Definitions. As used in 15-31-321 through 15-31-326, unless the context requires otherwise, the following definitions apply:

(1) "Affiliated corporation" means a United States parent corporation and any subsidiary of which more than 50% of the voting stock is owned directly or indirectly by another corporate member of the water's-edge combined group.

(2) "United States" means the 50 states of the United States and the District of Columbia.

(3) "Water's-edge combined group" means all corporations or entities included in the election of a taxpayer under 15-31-322.

History: **En. Sec. 1, Ch. 616, L. 1987.**

15-31-322. Water's-edge election. Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

(1) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in sections 1501 through 1505 of the Internal Revenue Code that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1), the 80% stock ownership requirements of section 1504 of the Internal Revenue Code must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(2) domestic international sales corporations, as described in sections 991 through 994 of the Internal Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code;

(3) export trade corporations, as described in sections 970 and 971 of the Internal Revenue Code;

(4) foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code;

(5) a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States.

History: En. Sec. 2, Ch. 616, L. 1987.

15-31-323. Apportionment factors. For purposes of 15-31-322(1) and (5), the location of payroll and property is determined under the individual state's laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, apportionment is determined under this chapter.

History: En. Sec. 3, Ch. 616, L. 1987.

15-31-324. Water's-edge election period — consent. (1) A water's-edge election may be made by a taxpayer and is effective only if every affiliated corporation subject to the taxes imposed under this chapter consents to the election. Consent by the common parent of an affiliated group constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under this chapter subsequent to the water's-edge election is considered to have consented to the election.

(2) Each water's-edge election must be for 3-year renewable periods, except as follows:

(a) No water's-edge election may be made for an income year beginning before October 1, 1987.

(b) A water's-edge election may be changed by a taxpayer prior to the end of each 3-year period only with the permission of the department of revenue. In granting a change of election, the department shall impose reasonable conditions that are necessary to prevent the avoidance of tax or clearly reflect income for the election period prior to the change.

History: En. Sec. 4, Ch. 616, L. 1987.

15-31-325. Treatment of dividends. For purposes of 15-31-321 through 15-31-326, dividends must be treated as follows:

(1) Dividends received from corporations incorporated outside the United States, to the extent taxable, are considered income subject to apportionment.

(2) The after-tax net income of United States corporations excluded from eligibility as affiliated corporations under 15-31-322(1) and possession corporations described in sections 931 through 934 and 936 of the Internal Revenue Code are considered dividends received from corporations incorporated outside the United States.

(3) Amounts included in income under sections 951 through 962 and 964 of the Internal Revenue Code are considered dividends from corporations incorporated outside the United States.

(4) Eighty percent of all dividends apportionable under this section must be excluded from income subject to apportionment.

(5) "Deemed" distributions, as set forth in section 78 of the Internal Revenue Code, and corresponding amounts with respect to dividends considered received under subsection (2) of this section must be excluded from the income of the water's-edge combined group.

(6) The dividends apportionable under this section are in lieu of any expenses attributable to dividend income.

(7) A dividend from a corporation required to be combined in the water's-edge combined group must be eliminated from the calculation of apportionable income.

History: En. Sec. 5, Ch. 616, L. 1987.

15-31-326. Domestic disclosure spreadsheet. The department of revenue may require taxpayers making a water's-edge election to submit within 6 months after the taxpayer files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge corporate group and those of its United States affiliated corporations.

History: En. Sec. 6, Ch. 616, L. 1987.

Part 4

Corporation Income Tax

Part Cross-References

Credit for alternative fuel motor vehicle conversion, 15-30-164.

15-31-401. Application of license and income taxes. (1) It is the intent of the legislature that the corporation license tax shall be applied to all corporations subject to taxation under part 1 of this chapter. Except as provided in subsection (2), the income tax provided by this part shall be applied to corporations that are not taxable under part 1 of this chapter but are taxable under an income tax.

(2) During its first 5 taxable years of activity in Montana, the net income earned from research and development activities by a research and development firm as described in 15-31-103 is not subject to either the corporation

license tax provided in part 1 of this chapter or to the corporation income tax provided in this part.

History: En. Sec. 1, Ch. 82, L. 1971; R.C.M. 1947, 84-6901; amd. Sec. 5, Ch. 659, L. 1987.

15-31-402. Short title — administration of part. This part shall be known as and may be cited as the "Corporation Income Tax", and it shall be administered by the department of revenue.

History: En. Sec. 2, Ch. 82, L. 1971; amd. Sec. 255, Ch. 516, L. 1973; R.C.M. 1947, 84-6902.

15-31-403. Rate of tax imposed — income from sources within state defined — alternative tax. (1) Except as provided in 15-31-401, there is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in 15-31-121 and 15-31-122 upon its net income derived from sources within this state for taxable years beginning after December 31, 1970, other than income for any period for which the corporation is subject to taxation under part 1 of this chapter, according to or measured by its net income.

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce, but does not include interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located within the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(3) Pursuant to Article III, section 2, of the Multistate Tax Compact, any corporation required to file a return under this part and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana does not exceed $100,000 may elect to pay a tax of 1/2 of 1% of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to Article IV, sections 16 and 17, of the Multistate Tax Compact.

History: En. Sec. 3, Ch. 82, L. 1971; amd. Sec. 1, Ch. 367, L. 1973; amd. Sec. 1, Ch. 247, L. 1977; R.C.M. 1947, 84-6903; amd. Sec. 6, Ch. 659, L. 1987.

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

15-31-404. Offset for license taxes — income tax collected considered license tax. There shall be offset against the corporation income tax imposed for any period the amount of any tax imposed against it for the same period under parts 1 through 3 and 5 of this chapter. In the event that taxes, interest, and penalties have been or will be assessed against, paid by, or collected from a corporation under this part, which assessment, payment, or collection should have been made under parts 1 through 3 and 5 of this chapter, such taxes, interest, and penalties shall be considered as having been assessed, paid, or collected under parts 1 through 3 and 5 as of the date they were made.

History: En. Sec. 4, Ch. 82, L. 1971; R.C.M. 1947, 84-6904.

15-31-405. Information return — period for assessment of tax. When a corporation formerly subject to tax under part 1 of this chapter becomes subject to tax under this part, it shall file an information return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under parts 1 through 3 and 5 and not under this part. For years subsequent to the year in which the change occurs, the tax will be assessed under this part.

History: En. Sec. 5, Ch. 82, L. 1971; R.C.M. 1947, 84-6905.

15-31-406. License tax sections incorporated by reference. The provisions of the following sections of this chapter are incorporated into this part by reference and made a part of this part:

(1) that part of 15-31-101 that defines the term "corporation" and 15-31-102, which specifies the classes of organizations whose income may not be taxed;

(2) sections 15-31-111 through 15-31-114, 15-31-117 through 15-31-119, 15-31-141, 15-31-142, 15-31-301 through 15-31-313, 15-31-501 through 15-31-506, 15-31-509, 15-31-511, 15-31-525, 15-31-526, 15-31-531, 15-31-532, 15-31-541, and 15-31-543, except that the term "gross income" must be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax", "license tax", "license fee", "corporation excise tax", or like words appear, referring to the tax imposed under part 1 of this chapter, there is substituted the words "income tax".

History: En. Sec. 6, Ch. 82, L. 1971; R.C.M. 1947, 84-6906; amd. Sec. 14, Ch. 439, L. 1981; amd. Sec. 50, Ch. 370, L. 1987; amd. Sec. 2, Ch. 538, L. 1989; amd. Sec. 2, Ch. 135, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 135 in (2), in list of statutory references, deleted references to 15-31-507 and 15-31-508 and inserted reference to 15-31-511; and made minor changes in style.

15-31-407. Employment of personnel — rules. The department of revenue may employ personnel and adopt rules and forms as the department finds necessary to place this part in operation and to carry out its provisions.

History: En. Sec. 7, Ch. 82, L. 1971; amd. Sec. 258, Ch. 516, L. 1973; R.C.M. 1947, 84-6907.

15-31-408. Disposition of revenue. The net revenue from the tax imposed by this part shall be disposed of in the same manner as revenue from the corporation license tax as provided in 15-1-501.

History: En. Sec. 8, Ch. 82, L. 1971; R.C.M. 1947, 84-6908.

Part 5

Administration and Collection

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-31-501. Department rules. The department of revenue shall have power to prescribe forms for returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this chapter.

History: En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R.C.M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933; re-en. Sec. 2303, R.C.M. 1935; amd. Sec. 5, Ch. 186, L. 1963; amd. Sec. 60, Ch. 516, L. 1973; R.C.M. 1947, 84-1508(part).

15-31-502. Assessment and payment of tax — estimated tax payment — amount of required installments. (1) All taxpayers shall compute the amount of tax payable under this chapter and shall remit the amount to the department of revenue on or before the 15th day of the 5th month following the close of the taxable period.

(2) (a) Each corporation shall make estimated tax payments if its annual estimated tax is $5,000 or more. The estimated payments must be made in installments, as follows, if the $5,000 threshold is met or exceeded:

(i) For a corporation taxed on a calendar-year basis:

For the following required installments the due date is:

1st	April 15
2nd	June 15
3rd	September 15
4th	December 15

(ii) For a corporation taxed on a fiscal-year basis:

For the following required installments the due date is:

1st	15th day of the 4th month
2nd	15th day of the 6th month
3rd	15th day of the 9th month
4th	15th day of the 12th month

(b) Except as provided in 15-31-510, the amount of any required installment is 25% of the required annual payment. The required annual payment is the lesser of:

(i) 80% of the tax shown on the return for the taxable year or, if a return is not filed, 80% of the tax for that year; or

(ii) 100% of the tax shown on the return of the corporation for the preceding taxable year if the preceding taxable year was a period of 12 months and if the corporation filed a return for that year.

(3) The application of this section to taxable years of less than 12 months must be in accordance with rules adopted by the department.

(4) At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R.C.M. 1921; amd. Sec. 2, Ch. 146, L. 1923; re-en. Sec. 2300, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973; R.C.M. 1947, 84-1505(1); amd. Sec. 4, Ch. 634, L. 1979; amd. Sec. 1, Ch. 182, L. 1981; amd. Sec. 2, Ch. 9, Sp. L. June 1989; amd. Sec. 1, Ch. 92, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 92 in (2)(a), in first sentence before "$5,000", substituted "is" for "can reasonably be expected to be"; in (2)(a)(i) and (2)(a)(ii) substituted installment due date schedules for former (2)(a) that read in part: "The following percentages of the estimated tax must be paid on the 15th day of the applicable months:

	4th month	6th month	9th month	12th month
Before the 1st day of the 4th month of the taxable year:	25%	25%	25%	25%
After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year:		33 ⅓%	33 ⅓%	33 ⅓%
After the last day of the 5th month and before the 1st day of the 9th month of the taxable year:			50%	50%
After the last day of the 8th month and before the 12th month of the taxable year:				100%";

substituted (2)(b) clarifying annual required payments for former (2)(b) that read: "If after paying any installment of estimated tax the taxpayer makes a new estimate, the amount of each installment, if any, is the amount that would have been paid if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased, as the case may be, by the amount computed by dividing:

(i) the difference between:

(A) the amount of estimated tax required to be paid before the date on which the new estimate was made; and

(B) the amount of estimated tax that would have been required to be paid before that date if the new estimate had been made when the first estimate was made:

(ii) by the number of installments remaining to be paid on or after the date on which the new estimate was made"; and made minor changes in style.

Applicability: Section 4(1), Ch. 92, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

Rulemaking Authority: Section 4(2), Ch. 92, L. 1993, provided: "The department of revenue may institute rulemaking under Title 2, chapter 4, to implement [this act] prior to October 1, 1993, but the rules may not be effective prior to October 1, 1993."

15-31-503. Deficiency assessment — notice — interest. (1) If the department of revenue determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment shall bear interest from the date specified in 15-31-502 for payment of the tax. A certificate by the department of the mailing of the notices specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices.

History: En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973; R.C.M. 1947, 84-1508.1(a); amd. Sec. 10, Ch. 811, L. 1991.

Cross-References

Deficiency assessment of banks and savings and loan institutions, 15-31-701.

15-31-504. Estimated tax on failure to file. (1) If any taxpayer fails to make return as herein required, the department of revenue is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

(2) For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporations where information has been obtained, the department shall also have power to examine or to cause to have examined by any agent or representative designated by it for that purpose any books, papers, records, or memoranda bearing upon the matters required to be included in the return and may require the

attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises and may take testimony and require proof material for its information.

History: En. Sec. 13, Ch. 166, L. 1933; re-en. Sec. 2303.9, R.C.M. 1935; amd. Sec. 2, Ch. 142, L. 1969; amd. Sec. 67, Ch. 516, L. 1973; R.C.M. 1947, 84-1517(1), (2).

15-31-505. Subpoenas — investigation of income, and shifting. (1) Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana in and for the county of Lewis and Clark to compel attendance of witnesses to testify before the department of revenue, together with the production of books and such other testimony by appropriate process.

(2) When the department has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the department shall have regard to the fair profits which would normally arise from the conduct of the business.

History: En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R.C.M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933; re-en. Sec. 2303, R.C.M. 1935; amd. Sec. 5, Ch. 186, L. 1963; amd. Sec. 60, Ch. 516, L. 1973; R.C.M. 1947, 84-1508(part).

15-31-506. Copy of federal return required — report of amended federal return. Every corporation shall, upon request of the department of revenue, furnish a copy of its federal income tax return and the computation schedule filed for such taxable year or years as the department may specify in its request. If the amount of a corporation's taxable income reported on its federal income tax return or the computation schedule filed for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, the corporation shall report such proposed change or correction to the department within 90 days after receiving official notice thereof. Any corporation filing an amended federal income tax return changing or correcting its taxable income for any taxable year shall also file an amended return with the department within 90 days thereafter.

History: En. Sec. 13, Ch. 166, L. 1933; re-en. Sec. 2303.9, R.C.M. 1935; amd. Sec. 2, Ch. 142, L. 1969; amd. Sec. 67, Ch. 516, L. 1973; R.C.M. 1947, 84-1517(3).

15-31-507. Repealed. Sec. 5, Ch. 135, L. 1993.

History: En. Sec. 7, Ch. 79, L. 1917; re-en. Sec. 2302, R.C.M. 1921; amd. Sec. 3, Ch. 146, L. 1923; re-en. Sec. 2302, R.C.M. 1935; amd. Sec. 59, Ch. 516, L. 1973; R.C.M. 1947, 84-1507.

15-31-508. Repealed. Sec. 5, Ch. 135, L. 1993.

History: En. Sec. 14, Ch. 166, L. 1933; re-en. Sec. 2303.10, R.C.M. 1935; amd. Sec. 68, Ch. 516, L. 1973; R.C.M. 1947, 84-1518.

15-31-509. Periods of limitation. (1) Except as otherwise provided in this section and in 15-31-544, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing shall be considered as filed on such last day. Where, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax, provided the suspension of the limitation set forth in this section shall last:

(i) only so long as the suspension of the federal statute of limitation; or

(ii) until 1 year after any federal changes have become final or any amended federal return is filed as a result of such suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by 15-31-506 until 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event no claim is filed shall automatically be so extended.

History: En. Sec. 2, Ch. 186, L. 1963; amd. Sec. 1, Ch. 142, L. 1969; amd. Sec. 61, Ch. 516, L. 1973; amd. Sec. 1, Ch. 101, L. 1974; R.C.M. 1947, 84-1508.2; amd. Sec. 11, Ch. 79, L. 1983; amd. Sec. 2, Ch. 222, L. 1983.

15-31-510. Estimated payments — interest penalty — tax returns — penalty — interest. (1) For corporations failing to make estimated payments according to the schedule provided in 15-31-502(2), there is assessed a 20% per year underpayment interest penalty calculated as follows:

(a) For purposes of this subsection (a), the amount of underpayment is the amount of the required installment set forth in 15-31-502 that exceeds the amount, if any, of the installment paid on or before the last date prescribed for payment.

(b) Notwithstanding the provisions of subsection (1)(a), the interest penalty with respect to an underpayment of any installment may not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the amount that would have been required to be paid on or before that date if the estimated tax were an amount equal to 80% of the tax for the taxable year, computed by placing on an annualized basis the taxable income:

(i) for the first 3 months of the taxable year in the case of the installment required to be paid in the 4th month;

(ii) for the first 3 months or for the first 5 months of the taxable year in the case of the installment required to be paid in the 6th month;

(iii) for the first 6 months or for the first 8 months of the taxable year in the case of the installment required to be paid in the 9th month; and

(iv) for the first 9 months or for the first 11 months of the taxable year in the case of the installment required to be paid in the 12th month of the taxable year.

(c) For purposes of subsection (1)(b), the taxable income must be placed on an annualized basis by:

(i) multiplying by 12 the taxable income referred to in subsection (1)(b); and

(ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subsection (1)(b).

(d) Notwithstanding subsections (1)(a) through (1)(c), the interest penalty with respect to an underpayment of any installment may not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds 80% of the amount determined under subsection (1)(e).

(e) To determine the amount under this subsection (e) for any installment:

(i) take the taxable income for all months during the taxable year preceding the filing month;

(ii) divide the amount by the base period percentage for all months during the taxable year preceding the filing month;

(iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and

(iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(f) For purposes of this subsection (1):

(i) the base period percentage for any period of months is the average percentage that the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income of the 3 preceding years;

(ii) the term "filing month" means the month in which the installment is required to be paid;

(iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70%; and

(iv) the department of revenue may by rule provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(2) If the tax for any corporation is not paid on or before the due date of the return as provided in 15-31-111(2), there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was due to reasonable cause and not to neglect.

(3) If any tax due under this section is not paid when due, by reason of extension granted or otherwise, interest is added to the tax due at the rate of 12% a year from the due date until paid.

History: En. Sec. 3, Ch. 9, Sp. L. June 1989; amd. Sec. 2, Ch. 92, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 92 in (1)(a), near beginning after "underpayment is", substituted "the amount of the required installment set forth in 15-31-502 that exceeds the amount" for "in excess of the amount of the installment that would be required to be paid if the estimated tax were equal to 80% of the tax shown on the return for the taxable year or, if no return was filed, 80% of the tax for the year over the amount"; in (1)(b), after "tax were", deleted "the lesser of the following"; deleted former (1)(b)(i) and (1)(b)(ii) precluding payment of the interest penalty if the estimated tax required to be paid was the lesser of the tax shown on the return of the corporation for the preceding taxable year if a return showing a liability for tax was filed for the preceding taxable year and the preceding year was a taxable year of 12 months or an amount equal to the tax computed at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year; and made minor changes in style.

Applicability: Section 4(1), Ch. 92, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

Rulemaking Authority: Section 4(2), Ch. 92, L. 1993, provided: "The department of revenue may institute rulemaking under Title 2, chapter 4, to implement [this act] prior to October 1, 1993, but the rules may not be effective prior to October 1, 1993."

15-31-511. Confidentiality of tax records. (1) Except as provided in this section in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4); or

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(4) The department shall on request:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and program planning, but the information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(5) A person convicted of violating this section shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted of violating this section, the person forfeits office and may not hold any public office or public employment in the state for a period of 1 year after conviction.

History: En. Sec. 1, Ch. 135, L. 1993.

15-31-512 through 15-31-520 reserved.

15-31-521. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any taxpayer relating to the liability of such taxpayer in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

History: En. 84-1526 by Sec. 1, Ch. 353, L. 1977; R.C.M. 1947, 84-1526; amd. Sec. 23, Ch. 581, L. 1979.

15-31-522. When immediate payment demanded. If the department of revenue finds that the assessment or collection of the tax or a deficiency in tax due under any corporation license tax statute of Montana for any taxable period will be jeopardized in whole or in part by delay, it may mail notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the department may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once.

History: En. Sec. 1, Ch. 246, L. 1969; amd. Sec. 58, Ch. 516, L. 1973; R.C.M. 1947, 84-1505.2.

15-31-523. Suspension or forfeiture on delinquency. (1) If a tax computed and levied hereunder is not paid or if a return is not filed before 5 p.m. on the last day of the 11th month after the date of delinquency, the corporate powers, rights, and privileges of the delinquent taxpayer, if it be a domestic corporation, shall be suspended, and if the delinquent taxpayer be a foreign corporation, it shall thereupon forfeit its rights to do intrastate business in this state. Provided that if any domestic corporation shall fail for a period of 5 consecutive years to either file a return or to pay the corporation license tax, the department of revenue shall notify such corporation by mail addressed to the latest address on file in its office that such corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of 60 days from and after the mailing of such notice. If such delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of said 60-day period, the department shall certify this fact to the secretary of state, and upon receipt of such certificate, the corporation shall be dissolved and the secretary of state shall indicate, by his records, such dissolution.

(2) The department shall transmit the name of each such corporation to the secretary of state, who shall immediately record the same in such manner that it may be available to the public. The suspension, forfeiture, or dissolution herein provided for shall become effective immediately when such record is made, and the certificate of the secretary of state shall be conclusive evidence of such suspension, forfeiture, or dissolution.

History: En. Sec. 10, Ch. 166, L. 1933; re-en. Sec. 2303.6, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1947; amd. Sec. 64, Ch. 516, L. 1973; R.C.M. 1947, 84-1514; amd. Sec. 69, Ch. 575, L. 1981.

15-31-524. Reviver of corporation after suspension or forfeiture. Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the department of revenue showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors; and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of $15. In case the application is made more than 1 year from the date the suspension or forfeiture occurred, the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year with respect to which the suspension or forfeiture occurred. Upon such payment, the secretary of state shall issue a certificate of reviver for which he shall collect a fee of $15 and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense, or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county clerk and recorder in any county of this state.

History: En. Sec. 11, Ch. 166, L. 1933; re-en. Sec. 2303.7, R.C.M. 1935; amd. Sec. 1, Ch. 49, L. 1947; amd. Sec. 15, Ch. 117, L. 1961; amd. Sec. 1, Ch. 52, L. 1967; amd. Sec. 65, Ch. 516, L. 1973; R.C.M. 1947, 84-1515; amd. Sec. 1, Ch. 156, L. 1987.

15-31-525. Levy upon and sale of property. If any tax imposed by this chapter or any portion of such tax is not paid when due, the department of revenue may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R.C.M. 1921; amd. Sec. 2, Ch. 146, L. 1923; re-en. Sec. 2300, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973; R.C.M. 1947, 84-1505(2); amd. Sec. 15, Ch. 439, L. 1981.

Cross-References

Distribution of delinquent taxes of bank or savings and loan institution, 15-31-701.

15-31-526. Action by attorney general. Action may be brought by the attorney general of the state at the instance of the department, in the name of the state, to recover the amount of any taxes, penalties, and interest due under this chapter.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R.C.M. 1921; amd. Sec. 2, Ch. 146, L. 1923; re-en. Sec. 2300, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973; R.C.M. 1947, 84-1505(3); amd. Sec. 12, Ch. 79, L. 1983.

15-31-527. Repealed. Sec. 54, Ch. 439, L. 1981.

History: En. Sec. 1, Ch. 53, L. 1967; amd. Sec. 57, Ch. 516, L. 1973; R.C.M. 1947, 84-1505.1.

15-31-528 through 15-31-530 reserved.

15-31-531. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as hereinafter provided for, interest shall be allowed on overpayments at the same rate as is charged on delinquent taxes due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest shall be allowed:

(a) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $1.

(3) A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973; R.C.M. 1947, 84-1508.1(part); amd. Sec. 2, Ch. 589, L. 1981.

Cross-References

Interest not allowed on refund resulting from net operating loss carryback or carryover, 15-31-114.

Refund of tax overpaid by bank on savings and loan institution, 15-31-701.

15-31-532. Application for refund — appeal from denial. If the department of revenue disallows any claim for refund, it shall notify the taxpayer as provided in 15-1-211. The taxpayer may seek review of the decision pursuant to 15-1-211.

History: En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973; R.C.M. 1947, 84-1508.1(part); amd. Sec. 11, Ch. 811, L. 1991.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-31-533 through 15-31-540 reserved.

15-31-541. Site of failure to act — evidence. The failure to do any act required by or under the provisions of this chapter shall be deemed an act committed in the office of the department of revenue in Helena, Montana. The certificates of the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required by or under the provisions of this chapter shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

History: En. Sec. 8, Ch. 166, L. 1933; re-en. Sec. 2303.4, R.C.M. 1935; amd. Sec. 63, Ch. 516, L. 1973; R.C.M. 1947, 84-1512.

15-31-542. Repealed. Sec. 18, Ch. 79, L. 1983.

History: En. Sec. 9, Ch. 166, L. 1933; re-en. Sec. 2303.5, R.C.M. 1935; R.C.M. 1947, 84-1513.

15-31-543. Penalties. (1) If any corporation shall refuse or neglect to make a return at the time hereinbefore specified in each year or shall render a false or fraudulent return, such corporation shall be liable to a penalty of not exceeding $5,000 and may be adjudged by a court of competent jurisdiction to forfeit the right to continue to engage in business in the state as such corporation until the license fee, together with all penalties and costs, shall be paid, which forfeiture may be enforced by the attorney general by proper proceedings in court.

(2) Every officer or employee of any corporation or other person who, without fraudulent intent, shall fail to make, render, sign, or verify any return or to supply any information within the time required by or under the provisions of this chapter shall be liable to a penalty of not more than $100 to be imposed, assessed, and collected by the department of revenue in the same manner as is provided in this chapter with regard to delinquent taxes.

History: (1)En. Sec. 6, Ch. 79, L. 1917; re-en. Sec. 2301, R.C.M. 1921; re-en. Sec. 2301, R.C.M. 1935; Sec. 84-1506, R.C.M. 1947; (2)En. Sec. 12, Ch. 166, L. 1933; re-en. Sec. 2303.8, R.C.M. 1935; amd. Sec. 66, Ch. 516, L. 1973; Sec. 84-1516, R.C.M. 1947; R.C.M. 1947, 84-1506, 84-1516.

15-31-544. Action on false or fraudulent return. Whenever a return is required to be filed and the taxpayer files a fraudulent return or fails to file the return, the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment.

History: En. Sec. 1, Ch. 408, L. 1981; amd. Sec. 1, Ch. 222, L. 1983.

15-31-545 through 15-31-550 reserved.

15-31-551. Certified copies of corporation license tax returns to taxpayer — fee. Certified copies of returns filed for corporation license tax under 15-31-111 may be furnished by the department of revenue to the taxpayer or his duly authorized representative upon payment of 50 cents for each page.

History: En. Sec. 1, Ch. 187, L. 1965; amd. Sec. 20, Ch. 516, L. 1973; R.C.M. 1947, 84-732(part).

15-31-552. Corporation license tax clearance certificates furnished. Upon request of a corporation the department of revenue may furnish to it a certificate to the effect that all taxes have been paid, that a return has been filed, and that all information has been supplied as required by the provisions of this chapter.

History: En. Sec. 2, Ch. 187, L. 1965; amd. Sec. 21, Ch. 516, L. 1973; R.C.M. 1947, 84-733; amd. Sec. 1, Ch. 658, L. 1991.

15-31-553. Fees to reimburse department for costs — deposit in general fund. All moneys collected under 15-31-551 and 15-31-552 shall be required to reimburse the department of revenue for costs involved in the preparation of the copies and certificates. All such moneys collected shall go into the general fund.

History: En. Sec. 3, Ch. 187, L. 1965; amd. Sec. 22, Ch. 516, L. 1973; R.C.M. 1947, 84-734.

15-31-554. Returns to which sections apply. The provisions of 15-31-551 through 15-31-553 shall apply to all returns on file and all returns to be filed hereafter.

History: En. Sec. 4, Ch. 187, L. 1965; R.C.M. 1947, 84-735.

Part 6

Lists of Corporations

15-31-601. Repealed. Sec. 2, Ch. 252, L. 1989.

History: En. Sec. 1, Ch. 469, L. 1973; R.C.M. 1947, 84-708.2; amd. Sec. 24, Ch. 581, L. 1979.

15-31-602. Repealed. Sec. 2, Ch. 252, L. 1989.

History: En. Sec. 2, Ch. 469, L. 1973; R.C.M. 1947, 84-708.3.

15-31-603. List of corporations furnished by secretary of state. The secretary of state shall direct a list of all corporations, foreign and domestic, subject to the terms of Title 35, chapter 1, to the department of revenue. The list shall include the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana; and

(4) such other information as the director of the department of revenue may require.

History: En. Sec. 3, Ch. 469, L. 1973; R.C.M. 1947, 84-708.4; amd. Sec. 1, Ch. 252, L. 1989.

15-31-604 through 15-31-607. Repealed. Sec. 2, Ch. 252, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

15-31-604. En. Sec. 4, Ch. 469, L. 1973; R.C.M. 1947, 84-708.5.

15-31-605. En. Sec. 5, Ch. 469, L. 1973; R.C.M. 1947, 84-708.6; amd. Sec. 25, Ch. 581, L. 1979.

15-31-606. En. Sec. 6, Ch. 469, L. 1973; R.C.M. 1947, 84-708.7.

15-31-607. En. Sec. 7, Ch. 469, L. 1973; R.C.M. 1947, 84-708.8.

Part 7

Banks and Savings and Loan Associations

15-31-701. Department of revenue — special duties for transmitting corporation license tax revenues collected from banks or savings and loan associations to counties. (1) Within 30 days after receiving corporation license tax returns and payments from banks or savings and loan associations, the department of revenue shall transmit to the county treasurer of the county in which the business is located the revenues calculated under 15-31-702(1)(b).

(2) If the department of revenue determines, under the provisions of 15-31-503 and 15-31-531, that a bank or savings and loan association owes more taxes than shown on the original return or has paid more than the tax, penalty, or interest due in any year, it shall notify the bank or savings and loan association pursuant to 15-1-211. Review may be sought pursuant to 15-1-211. County treasurers shall issue warrants for their portion of the overpayment received and interest, as provided in 15-31-531.

(3) The department shall continue to exercise all its duties and powers outlined in this title with respect to auditing returns and enforcing payment of the corporation license taxes owed by banks and savings and loan associations. Any delinquent taxes collected from the sale of property of a bank or savings and loan association under the provisions of 15-31-525 shall be transmitted to the county in which the corporation owing the delinquent taxes is located. The only duties of the county treasurers in this regard are issuing refunds and distributing the taxes to local taxing jurisdictions.

History: En. Sec. 5, Ch. 634, L. 1979; amd. Sec. 12, Ch. 811, L. 1991.

15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations. (1) All corporation license taxes, interest, and penalties collected from banks and savings and loan associations must, in accordance with the provisions of 15-1-501(6), be distributed in the following manner:

(a) 20% must be allocated as provided in 15-1-501(3); and

(b) 80% is statutorily appropriated, as provided in 17-7-502, for allocation to the various taxing jurisdictions within the county in which the bank or savings and loan association is located.

(2) The corporation license taxes, interest, and penalties distributed under subsection (1)(b) must be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located.

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law to levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department of revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions.

History: En. Sec. 6, Ch. 634, L. 1979; amd. Sec. 10, Ch. 703, L. 1985; amd. Sec. 12, Ch. 16, L. 1991; amd. Sec. 2, Ch. 626, L. 1991; amd. Sec. 4, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 near middle of (1), after "must", inserted "in accordance with the provisions of 15-1-501(6)"; and in (1)(a), after "must be", deleted "remitted to the state treasurer to be". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Cross-References

Exempt from pledge to payment of long-range building program bonds, 17-5-408.

15-31-703. Moneyed capital and shares of banks exempt. (1) Moneyed capital and shares of banks are exempt from taxation.

(2) "Moneyed capital" means money, bonds, notes, and other evidence of indebtedness, including evidence of indebtedness secured by a mortgage on real or personal property, in the hands of individual citizens and corporations coming into competition with the business of national banks or employed in conducting a banking or investment business.

History: En. Sec. 7, Ch. 634, L. 1979.

CHAPTER 32

ENERGY-RELATED AND ECOLOGICAL TAX INCENTIVES

Part 1 — Investment in Energy Conservation or Alternative Energy

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15-32-603. Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material.
15-32-604. Limitation of credit.
15-32-605 through 15-32-608 reserved.
15-32-609. Recycled material qualifying for deduction — purpose — rulemaking.
15-32-610. Deduction for purchase of recycled material.
15-32-611. Department to make rules.

Chapter Cross-References

Property tax exemption for capital investment in a recognized nonfossil form of energy generation, 15-6-201.

Part 1

Investment in Energy Conservation or Alternative Energy

15-32-101. Purpose. The purpose of this part is to encourage the use of alternative energy sources and the conservation of energy through incentive programs. Such incentives are to be made available to the energy user on a basis which requires him to take the initiative in obtaining a particular incentive. This part allows but does not require a public utility to extend credit for energy conservation investments.

History: En. 84-7401 by Sec. 1, Ch. 548, L. 1975; amd. Sec. 7, Ch. 576, L. 1977; R.C.M. 1947, 84-7401.

15-32-102. Definitions. As used in this part, the following definitions apply:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, which is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or more of the following results of an investment: reducing the waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work.

(4) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

(5) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(6) "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace that:

(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of health and environmental sciences pursuant to 15-32-203; or

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of health and environmental sciences pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of health and environmental sciences pursuant to 15-32-203.

(7) "Recognized nonfossil forms of energy generation" means:

(a) a system for the utilization of solar energy including passive solar systems, wind, solid wastes, or the decomposition of organic wastes for capturing energy or converting energy sources into usable sources;

(b) a system for the production of electric power from solid wood wastes; or

(c) a small system for the utilization of water power by means of an impoundment not over 20 acres in surface area.

History: En. 84-7402 by Sec. 2, Ch. 548, L. 1975; R.C.M. 1947, 84-7402; amd. Sec. 1, Ch. 652, L. 1979; amd. Sec. 1, Ch. 513, L. 1985; amd. Sec. 16, Ch. 83, L. 1989; amd. Sec. 2, Ch. 467, L. 1991; amd. Sec. 1, Ch. 646, L. 1991.

15-32-103. Deduction for energy-conserving investments. (1) In addition to all other deductions from gross corporate income allowed in computing net income under chapter 31, part 1, a taxpayer may deduct a portion of his expenditure for a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building:	If the installation or investment is made in a building not used as a residence:
100% of first $1,000 expended	100% of first $2,000 expended
50% of next $1,000 expended	50% of next $2,000 expended
20% of next $1,000 expended	20% of next $2,000 expended
10% of next $1,000 expended	10% of next $2,000 expended

(2) This tax treatment is subject to approval of the department as provided in 15-32-106 and may not be claimed for so much of the expenditure and capital investment as is financed by a state, federal, or private grant for energy conservation.

History: En. 84-7403 by Sec. 3, Ch. 548, L. 1975; amd. Sec. 1, Ch. 576, L. 1977; R.C.M. 1947, 84-7403; amd. Sec. 5, Ch. 480, L. 1981; amd. Sec. 1, Ch. 133, L. 1989.

15-32-104. Limitations on deduction and credit. Tax treatment under 15-32-103 and 15-32-109 is limited to:

(1) capital investments made after January 1, 1975;

(2) persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel extraction or conventional hydroelectric development; and

(3) a ceiling of $100,000 in tax savings per year to any one person or firm.

History: En. 84-7406 by Sec. 6, Ch. 548, L. 1975; R.C.M. 1947, 84-7406; amd. Sec. 6, Ch. 480, L. 1981.

15-32-105. Application to new construction — rules. (1) It is the intent of the legislature that no deduction or credit under this part be allowed for capital investment for an energy conservation practice in the new construction of a building if that capital investment would have been made under established standards of new construction. The department of revenue shall adopt rules to implement this legislative intent. Such rules shall be based on the best currently available methods of analysis, including those of the national bureau of standards, the department of housing and urban development, and other federal agencies and professional societies and materials developed by the department. Provisions shall be made for an annual updating of rules and standards as required.

(2) The department may adopt rules to define standard components of conventional buildings and to establish other necessary elements of the definition of passive solar system consistent with the intent of 15-32-102.

History: En. Sec. 6, Ch. 576, L. 1977; amd. Sec. 7, Ch. 480, L. 1981.

15-32-106. Procedure for obtaining benefit of deduction or credit. The department of revenue shall provide forms on which a taxpayer may apply for a tax credit under 15-32-109. The department of revenue shall approve a deduction or credit under 15-32-103 or 15-32-109 which demonstrably promotes energy conservation or utilizes a recognized nonfossil form of energy generation. The department of revenue may refer a deduction or credit involving energy generation to the department of natural resources and conservation for its advice, and the department of natural resources and conservation shall respond within 60 days. The department of revenue may refer a deduction or credit involving energy conservation to the department of administration for its advice, and the department of administration shall respond within 60 days. The department of revenue may deny a deduction or credit which it finds to be impractical or ineffective.

History: En. 84-7404 by Sec. 4, Ch. 548, L. 1975; R.C.M. 1947, 84-7404; amd. Sec. 8, Ch. 480, L. 1981; amd. Sec. 2, Ch. 133, L. 1989.

15-32-107. *(Temporary)* **Loans by utilities and financial institutions — tax credit for interest differential.** (1) A public utility providing electricity or natural gas may install or pay for the installation of energy conservation materials or recognized nonfossil forms of energy generation systems in a dwelling. The utility may agree with the occupant of the dwelling that the occupant shall reimburse the utility for its expenditure in periodic installment payments added to the occupant's regular bill for electricity or natural gas. The utility may charge interest not exceeding the equivalent of 7% per year on the declining balance of the sum advanced for the installation of energy conservation materials and recognized nonfossil forms of energy generation systems.

(2) A financial institution, as defined in 32-6-103, may offer and make loans at an interest rate not less than 2 percentage points below the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district.

(3) Except as provided in subsection (6), a public utility or a financial institution lending money under this section may compute the difference between interest it actually receives on such transactions and the interest which would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under 15-51-101 or for the corporation license tax under chapter 31, part 1. The public service commission shall regulate rates in such a manner that a utility making loans under this section may not make a profit as the result of this section. The financial institution may apply the difference so computed as a credit against its tax liability for the corporation license tax under chapter 31, part 1.

(4) A utility may not claim a tax credit under this section exceeding $750,000 in any tax year. A financial institution may not claim a tax credit under this section exceeding $2,000 in any tax year.

(5) The public service commission may make rules to implement this section as it shall apply to public utilities only.

(6) A public utility whose purchases of or investments in conservation are placed in the rate base as provided in Title 69, chapter 3, part 7, may not receive a tax credit under subsection (3).

15-32-107. *(Effective July 1, 1995)* **Loans by utilities and financial institutions — tax credit for interest differential for loans made prior to July 1, 1995.** (1) Except as provided in subsection (4), a public utility or a financial institution that lent money or made qualifying installations under this section as it read prior to July 1, 1995, may compute the difference between interest it actually receives on the transactions and the interest that would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under 15-51-101 or for the corporation license tax under chapter 31, part 1. The public service commission shall regulate rates in such a manner that a utility making loans under this section may not make a profit as the result of this section. The financial institution may apply the difference so computed as a credit against its tax liability for the corporation license tax under chapter 31, part 1.

(2) A utility may not claim a tax credit under this section exceeding $750,000 in any tax year. A financial institution may not claim a tax credit under this section exceeding $2,000 in any tax year.

(3) The public service commission may make rules to implement this section as it applies to public utilities only.

(4) A public utility whose purchases of or investments in conservation are placed in the rate base as provided in Title 69, chapter 3, part 7, may not receive a tax credit under subsection (1).

History: En. 84-7405 by Sec. 5, Ch. 548, L. 1975; R.C.M. 1947, 84-7405; amd. Sec. 1, Ch. 666, L. 1979; amd. Sec. 1, Ch. 266, L. 1981; amd. Sec. 7, Ch. 610, L. 1983; amd. Sec. 1, Ch. 331, L. 1987; amd. Sec. 1, Ch. 535, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 535 deleted former (1) authorizing public utility to install energy conservation systems in dwellings and to accept repayments in installments (see 1993 Session Law for text); deleted former (2) that read: "(2) A financial institution, as defined in 32-6-103, may offer and make loans at an interest rate not less than 2 percentage points below the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district"; in (1), near beginning, substituted "subsection (4)" for "subsection (6)", after "institution" substituted "that lent money or made qualifying installations" for "lending money", and after "section" inserted "as it read prior to July 1, 1995"; at end of (4) substituted "subsection (1)" for "subsection (3)"; and made minor changes in style. Amendment effective July 1, 1995.

15-32-108. Extension of existing classifications. Any classification of property under the provisions of section 3, Chapter 548, Laws of 1975, that existed prior to January 1, 1977, approved by the department of revenue before April 19, 1977, shall continue in effect until December 31, 1982. On January 1, 1983, the taxable percentage of such property shall be determined under chapter 6, part 1, or that part as it may be recodified or amended.

History: En. Sec. 9, Ch. 576, L. 1977; R.C.M. 1947, 84-7403.1; amd. Sec. 26, Ch. 581, L. 1979.

15-32-109. Credit for energy-conserving expenditures. (1) Subject to the restrictions of subsections (2) and (3), a resident individual taxpayer may take as a credit against the taxpayer's tax liability under chapter 30 a portion of his expenditure for a capital investment in a building for an energy conservation purpose, determined as follows:

(a) in the case of an expenditure for a residential building, the lesser of:

(i) $150; or

(ii) 5% of the expenditure; and

(b) in the case of an expenditure for a building not used as a residence, the lesser of:

(i) $300; or

(ii) 5% of the expenditure.

(2) The credit or the sum of the credits under subsection (1):

(a) may not exceed the taxpayer's tax liability; and

(b) is subject to the provisions of 15-32-104.

(3) There is no carryback or carry-forward of the credit permitted under this section, and the credit must be applied in the year the expenditure is incurred, as determined by the taxpayer's accounting method.

History: En. Sec. 1, Ch. 480, L. 1981.

15-32-110 through 15-32-114 reserved.

15-32-115. Credit for geothermal system — to whom available — eligible costs — limitations. (1) A resident individual taxpayer who completes installation of a geothermal system, as defined in 15-32-102, in the taxpayer's principal dwelling is entitled to claim a tax credit, as provided in subsection (3), against the taxpayer's tax liability under chapter 30 for a portion of the installation costs of the system, up to $250 per year for 4 years. The credit may not exceed the taxpayer's income tax liability for the taxable year in which the credit is claimed.

(2) For the purposes of this section, installation costs include the cost of:

(a) trenching, well drilling, casing, and downhole heat exchangers;

(b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;

(c) ground source or ground coupled heat pumps;

(d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and

(e) design and labor.

(3) The tax credit allowed under this section is deductible from the taxpayer's income tax liability for the taxable year in which the installation costs were incurred and for the next 3 taxable years succeeding the taxable year in which the installation costs were incurred. There is no carryback or carryforward of the credit permitted under this section.

History: En. Sec. 2, Ch. 646, L. 1991.

Part 2

Tax Credit for Installing Alternative Energy System

15-32-201. Amount of credit — to whom available. (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in the taxpayer's principal dwelling prior to January 1, 1993, or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 ½% of the next $3,000 of the cost of the system, including installation costs, less grants received, against the income tax liability imposed against the taxpayer pursuant to chapter 30.

(2) A resident individual taxpayer who completes installation of an energy system using a low emission wood or biomass combustion device, as defined in 15-32-102(6)(a), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 20% of the first $1,000 and 10% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

(3) A resident individual taxpayer who completes installation of an energy system that uses a low emission wood or biomass combustion device, as defined in 15-32-102(6)(b), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

History: En. 84-7414 by Sec. 1, Ch. 574, L. 1977; R.C.M. 1947, 84-7414(1); amd. Sec. 1, Ch. 480, L. 1983; amd. Sec. 2, Ch. 513, L. 1985; amd. Sec. 3, Ch. 467, L. 1991; amd. Sec. 27, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 in (2) substituted "15-32-102(6)(a)" for "15-32-102(5)(a)"; in (3) substituted "15-32-102(6)(b)" for "15-32-102(5)(b)"; and made minor changes in style.

15-32-202. Taxable years in which credit may be claimed — carryover. The tax credit is to be deducted from the taxpayer's income tax liability for the taxable year in which the energy system was acquired by the taxpayer. If the amount of the tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability. Notwithstanding the foregoing provision, no tax credit may be carried over for deduction after the fourth taxable year succeeding the taxable year in which the energy system was acquired.

History: En. 84-7414 by Sec. 1, Ch. 574, L. 1977; R.C.M. 1947, 84-7414(2).

15-32-203. Department to make rules. (1) The department of revenue shall prescribe rules necessary to carry out the purposes of this part.

(2) The department of health and environmental sciences shall adopt rules establishing emission testing and emission certification standards for low emission wood or biomass combustion devices and maintain a list of such devices that are certified.

History: En. 84-7415 by Sec. 3, Ch. 574, L. 1977; R.C.M. 1947, 84-7415; amd. Sec. 3, Ch. 513, L. 1985.

Part 3

Tax Deduction for Purchasing Montana Produced Organic Fertilizer

15-32-301. Purpose. The purpose of this part is to promote the use of organic matter produced by Montana industries and municipalities to revitalize Montana lands and to assist in making organic fertilizer economically competitive with inorganic fertilizer.

History: En. Sec. 1, Ch. 533, L. 1981.

15-32-302. Definitions. As used in this part, the following definitions apply:

(1) "Organic fertilizer" means raw organic matter that has been processed and aged for use in increasing soil condition and fertility, and includes soil amendments as that term is defined in 80-10-101.

(2) "Raw organic matter" means unprocessed plant or animal waste products.

History: En. Sec. 2, Ch. 533, L. 1981.

15-32-303. Deduction for purchase of Montana produced organic fertilizer. In addition to all other deductions from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct expenditures made by the taxpayer for organic fertilizer produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income.

History: En. Sec. 3, Ch. 533, L. 1981; amd. Sec. 18, Ch. 634, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 634 near beginning, after "deductions", deleted "from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or"; and made minor changes in style. Amendment effective May 11, 1993.

Effective Date — Retroactive Applicability: Section 23, Ch. 634, L. 1993, provided: "[This act] is effective on passage and approval [approved May 11, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Part 4

Wind-Generated Electricity

15-32-401. Purpose and statement of policy. The purpose of this part is to encourage the development of a wind energy industry in Montana without adversely affecting tax revenues received from existing economic activity in the state. Because of the wind energy potential within the state, it is desirable to encourage wind energy generation for the purpose of attracting wind energy manufacturing industries to the state. It is also desirable for new or expanded industry to secure wind-generated electricity on a direct contract sales basis without adversely affecting rates charged to other electricity users. Sound fiscal policy requires that encouragement be given to a wind energy industry without subtracting from existing sources of revenue to the state.

History: En. Sec. 1, Ch. 648, L. 1983.

15-32-402. Commercial investment credit — wind-generated electricity. (1) An individual, corporation, partnership, or small business corporation as defined in 15-31-201 that makes an investment of $5,000 or more in certain depreciable property qualifying under section 38 of the Internal Revenue Code of 1954, as amended, for a commercial system located in Montana which generates electricity by means of wind power is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce wind energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the wind energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the wind energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify under section 38 of the Internal Revenue Code of 1954, as amended, and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system.

History: En. Sec. 2, Ch. 648, L. 1983.

15-32-403. Limitation on credit. Whenever any federal wind energy tax credits for a system that generates electricity by means of wind power are allowed or allowable under section 48(1) of the Internal Revenue Code or any other federal law, the state credit allowed by 15-32-402 must be reduced by the amount of federal credits so that the effective credit does not exceed 60% of the eligible costs.

History: En. Sec. 3, Ch. 648, L. 1983.

15-32-404. Carryover of credit. The tax credit allowed under 15-32-402 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the taxable year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding taxable year or years until the total amount of the tax credit, subject to the limitation of 15-32-403, has been deducted from tax liability. However, no credit may be carried beyond the seventh taxable year succeeding the taxable year in which the equipment was placed in service.

History: En. Sec. 4, Ch. 648, L. 1983.

15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by 15-30-162 and 15-31-123 through 15-31-125, may be claimed for the investment. Property tax reduction allowed by 15-6-201(3) may not be applied to a facility for which a credit is claimed pursuant to this part.

History: En. Sec. 5, Ch. 648, L. 1983; amd. Sec. 8, Ch. 648, L. 1983.

15-32-406. Separation of credit portion. In the case of a business, a portion of which qualifies for the credit pursuant to 15-32-402 and a portion of which does not qualify for the credit, taxes due from each portion must be separated by using the three-factor formula provided in 15-31-305.

History: En. Sec. 6, Ch. 648, L. 1983.

15-32-407. Rules authorized. The department of revenue is authorized to adopt rules to implement this part. The purpose of such rules must be to insure the following:

(1) proper and efficient administration of this part;

(2) proper reporting of information and payment of any amounts due by persons claiming the credit pursuant to this part;

(3) the claiming of the credit only against taxes due as a consequence of income produced by new economic activity in the state as described in 15-32-402.

History: En. Sec. 7, Ch. 648, L. 1983.

Part 5 reserved

Part 6
Recycling of Material

15-32-601. *(Temporary)* **Definitions.** For the purposes of this part, unless otherwise required by the context, the following definitions apply:

(1) "Collect" means the collection and delivery of reclaimable materials to a recycling or reclaimable materials processing facility.

(2) "Postconsumer material" means a product or packaging material that has served its final intended use, that has been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use, and that is usually thrown away and hauled to landfills. This term does not include wastes generated during production of an end product.

(3) "Reclaimable material" means material that has useful physical or chemical properties after serving a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer. Except for claiming a tax credit as provided in 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material.

(4) "Recycled material" means a substance that is produced from reclaimed material as provided in 15-32-609. *(Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)*

History: En. Sec. 1, Ch. 712, L. 1991; amd. Sec. 1, Ch. 568, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 568 inserted definition of postconsumer material; in definition of reclaimable material inserted second sentence that read: "Except for claiming a tax credit as provided in 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material"; and in definition of recycled material, before "reclaimed", deleted "at least 90%" and at end inserted "as provided in 15-32-609".

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-32-602. *(Temporary)* **Amount and duration of credit — how claimed.** (1) An individual, corporation, partnership, or small business corporation, as defined in 15-31-201, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for investments in depreciable property to collect or process reclaimable material or to manufacture a product from reclaimed material, if the taxpayer qualifies under 15-32-603.

(2) Subject to 15-32-603(2), a taxpayer qualifying for a credit under 15-32-603 is entitled to claim a credit in an amount equal to 25% of the cost of the property purchased to collect or process reclaimable material or to manufacture a product from reclaimed material only in the year in which the property was purchased. If qualifying property was purchased prior to January 1, 1992, but on or after January 1, 1990, a taxpayer is entitled to a credit for tax year 1992. *(Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)*

History: En. Sec. 2, Ch. 712, L. 1991.

15-32-603. *(Temporary)* **Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material.** (1) The following requirements must be met to be entitled to a tax credit for investment in property to collect or process reclaimable material or to manufacture a product from reclaimed material:

(a) The investment must be for depreciable property used primarily to collect or process reclaimable material or to manufacture a product from reclaimed material.

(b) (i) The taxpayer claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that collects or processes reclaimable material or that manufactures a product from reclaimed material. For the purposes of this section, a business qualifies as a business that collects reclaimable material if it gathers reclaimable material for later sale or processing for another business that has as its primary business function the collection or processing of reclaimable material or the manufacture of a product from reclaimed material. The collection of reclaimable material may be a minor or nonprofit part of a business otherwise engaged in a retail trade or other business activity.

(ii) The taxpayer may but need not operate or conduct a business that collects or processes reclaimable material or manufactures a product from reclaimed material. If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (1)(b), and must have been collecting or processing reclaimable material or manufacturing a product from reclaimed material during the tax year for which the credit is claimed.

(d) The reclaimed material collected, processed, or used to manufacture a product may not be an industrial waste generated by the person claiming the tax credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

(2) A credit under this section may be claimed by a taxpayer for a business only if the qualifying property was purchased on or after January 1, 1990, but before January 1, 1996.

(3) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(4) A tax credit otherwise allowable under this section that is not used by the taxpayer in the taxable year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year.

(5) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(6) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to collect or process reclaimable material or to manufacture a product from reclaimed material. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law. *(Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)*

History: En. Sec. 3, Ch. 712, L. 1991; amd. Sec. 3, Ch. 568, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 568 inserted (1)(d)(i) and (1)(d)(ii) providing exceptions for reclaimed material that is industrial waste; and made minor changes in style.

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-32-604. *(Temporary)* **Limitation of credit.** Notwithstanding the provisions of 15-32-602 and 15-32-603, a tax credit may not be claimed for an investment in property used to produce energy from reclaimed material. *(Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)*

History: En. Sec. 4, Ch. 712, L. 1991.

15-32-605 through 15-32-608 reserved.

15-32-609. Recycled material qualifying for deduction — purpose — rulemaking. (1) The purpose of providing a tax deduction for the purchase of recycled materials is to encourage the use of goods made from reclaimed materials, especially postconsumer materials, and to discourage consumption of the same goods made from new materials. To achieve this goal, the definition of recycled material must be left to department of revenue expertise. Definitions cannot be legislatively enacted to achieve the purpose of this section because of rapid changes in technology, social awareness, and market economics. It is the intent of the legislature that the department revise, as often as it considers necessary to fulfill the purpose of this section, the definition of qualifying recycled material.

(2) The department shall by rule adopted pursuant to 15-32-611 specify recycled material that qualifies for the deduction authorized by 15-32-610. The department shall classify qualifying recycled material into different categories based upon the reclaimed material used in producing the recycled material, the ultimate use of the recycled material produced from the reclaimed material, and the amount and type of reclaimed material the recycled material must contain. In the definition of recycled material, the department may consider the point in the manufacturing and consumption cycle from which material was reclaimed and other factors contributing to precise definitions.

(3) In addition to the public participation provisions of Title 2, chapter 4, the department shall establish a register of interested persons and experts in the field of recycling. Prior to proposing an administrative rule, the department shall mail a notice to the interested persons of the department's contemplated actions, soliciting their views on possible solutions or courses of action. All proposed and adopted rules must also be mailed to the interested persons.

(4) The rules must specify the unit of measurement for classifications of recycled materials. The measurement may be based upon volume, weight, fiber content, or other applicable standard.

(5) The department shall by rule designate one or more agencies that are generally recognized in the industry to certify the contents of recycled materials.

History: En. Sec. 2, Ch. 568, L. 1993.

Compiler's Comments

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-32-610. *(Temporary)* **Deduction for purchase of recycled material.** In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to 10% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana. *(Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)*

History: En. Sec. 5, Ch. 712, L. 1991; amd. Sec. 4, Ch. 568, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 568 near middle increased allowable deductible amount from 5% to 10% of the taxpayer's expenditures.

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

15-32-611. *(Temporary)* **Department to make rules.** The department of revenue shall prescribe rules necessary to carry out the purposes of this part. *(Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)*

History: En. Sec. 6, Ch. 712, L. 1991.

CHAPTER 33

SMALL BUSINESS INVESTMENT INCENTIVES

Part 1 — Small Business Investment Companies — Tax Exemptions

15-33-101. Short title.
15-33-102. Purpose.
15-33-103. Definition.
15-33-104. Reporting — recordkeeping by the department.
15-33-105. Rulemaking authority.
15-33-106. Capital gains — dividends exempted.

Part 1

Small Business Investment Companies — Tax Exemptions

15-33-101. Short title. This part may be cited as the "Small Business Investment Incentive Act".

History: En. Sec. 1, Ch. 571, L. 1981.

15-33-102. Purpose. The purpose of this part is to encourage private sector investment in venture capital firms called small business investment companies, which are organized for the purpose of diversifying and strengthening employment opportunities of companies within Montana. This part, by establishing limited tax exemptions, demonstrates a recognition by the legislature that significant incentives must be offered to attract private risk capital to manufacturing, agricultural, and timber product processing companies when the alternative investments for private risk capital are natural resource ventures, which often yield extremely high rates of return. The legislature further recognizes the necessity of tax incentives for investors in manufacturing, agricultural, and timber product processing, given the hardship caused many Montana communities by their reliance on an economic base dominated by single, large industries.

History: En. Sec. 2, Ch. 571, L. 1981.

15-33-103. Definition. For the purposes of this part, "small business investment company" or "SBIC" means a small business investment company as defined in section 103 of the federal Small Business Investment Act of 1958, as amended.

History: En. Sec. 3, Ch. 571, L. 1981.

15-33-104. Reporting — recordkeeping by the department. The chairman or president of each small business investment company shall report on a form established by the department on a monthly basis the name of each investor, the amount of the investment made, and the date of investment.

History: En. Sec. 4, Ch. 571, L. 1981.

15-33-105. Rulemaking authority. The department of revenue may adopt rules necessary to carry out the provisions of this part.

History: En. Sec. 5, Ch. 571, L. 1981.

15-33-106. Capital gains — dividends exempted. Any capital gains or dividend income realized by an individual or a corporation from an investment in an SBIC organized in accordance with this part is exempt from taxation under the provisions of Title 15, chapters 30 and 31.

History: En. Sec. 6, Ch. 571, L. 1981.

CHAPTER 34

RESERVED

CHAPTER 35

COAL SEVERANCE TAX

Part 1 — General Provisions

15-35-101. Legislative findings and declarations of purpose.
15-35-102. Definitions.
15-35-103. Severance tax — rates imposed.
15-35-104. Quarterly statement and payment of tax.
15-35-105. Penalty for delinquent tax.
15-35-106. Annual testing of samples.
15-35-107. When value of coal may be imputed — procedure.
15-35-108. Disposal of severance taxes.
15-35-109. Repealed.
15-35-110. Renumbered 15-35-121 by Code Commissioner, 1983.
15-35-111. Renumbered 15-35-122 by Code Commissioner, 1983.
15-35-112. Deficiency assessment — review — interest.
15-35-113. Credit for overpayment — interest on overpayment.
15-35-114. Statute of limitations.
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15-35-121. Penalties for neglect or false statement.
15-35-122. Rulemaking authority.

Part 2 — New Coal Production Incentive Tax Credit Act

15-35-201. Short title.
15-35-202. New coal production incentive tax credit allowed — application limited.
15-35-203. Calculation and application of credit.
15-35-204. Reporting requirements for credit — duty of department.
15-35-205. Returns and taxpayer information open to public inspection — certain exceptions.

Chapter Cross-References

Coal tax trust fund, Art. IX, sec. 5, Mont. Const.

Coal gross proceeds tax, Title 15, ch. 23, part 7.

Resource indemnity trust tax, Title 15, ch. 38.

Coal Tax Oversight Committee, Ch. 619, L. 1979.

Part 1
General Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-35-101. Legislative findings and declarations of purpose. (1) The legislature finds that while coal is extracted from the earth like metal minerals, there are differences between coal and metal minerals such that they should be classified in different categories for taxation purposes. The legislature finds that while coal can be utilized like petroleum products, there are differences between coal and petroleum such that they should be classified in different categories for taxation purposes. The legislature further finds that:

(a) coal is the only mineral which can supply energy while being easily found in abundance in Montana;

(b) coal is the only mineral which is so often marketed through sales contracts of many years' duration;

(c) coal, unlike most minerals, varies widely in composition and consequent value when marketed;

(d) coal in Montana is subject to regional and national demands for development which could affect the economy and environment of a larger portion of the state than any other mineral development has done;

(e) subbituminous coal and lignite coal in Montana have sufficiently different markets and value and therefore require different production taxes;

(f) coal produced in underground mines has higher production costs and underground producers are able to pay lesser amounts of royalty and production tax than strip-mine producers can pay; and

(g) coal production in Montana has been subject to an uncoordinated array of taxes which overlap one another and yield revenue in an inconsistent and unpredictable manner.

(2) The legislature declares that the purposes of this chapter are to:

(a) allow the severance taxes on coal production to remain a constant percentage of the price of coal;

(b) stabilize the flow of tax revenue from coal mines to local governments through the property taxation system;

(c) simplify the structure of coal taxation in Montana, reducing tax overlap and improving the predictability of tax projections; and

(d) accomplish the foregoing purposes by establishing categories of taxation which recognize the unique character of coal as well as the variations found within the coal industry.

History: En. 84-1312 by Sec. 1, Ch. 525, L. 1975; R.C.M. 1947, 84-1312; amd. Sec. 1, Ch. 608, L. 1987.

15-35-102. *(Temporary)* **Definitions.** As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(8) "Extended depth auger method" means a method of mining that penetrates a coal deposit and removes the coal through a series of circular openings with bored shafts averaging at least 300 feet in depth.

(9) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(10) "Produced" means severed from the earth.

(11) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(12) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(13) "Strip mining" is defined in 82-4-203 and includes "surface mining" but does not include the extended depth auger method of mining.

(14) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(15) "Ton" means 2,000 pounds.

(16) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203. *(Terminates June 30, 1997—sec. 4, Ch. 580, L. 1993.)*

15-35-102. *(Effective July 1, 1997)* **Definitions.** As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(9) "Produced" means severed from the earth.

(10) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed his base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(12) "Strip mining" is defined in 82-4-203 and includes "surface mining".

(13) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(14) "Ton" means 2,000 pounds.

(15) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203.

History: En. 84-1313 by Sec. 2, Ch. 525, L. 1975; amd. Sec. 1, Ch. 156, L. 1977; R.C.M. 1947, 84-1313; amd. Sec. 1, Ch. 377, L. 1983; amd. Sec. 2, Ch. 636, L. 1985; amd. Sec. 51, Ch. 370, L. 1987; amd. Sec. 2, Ch. 608, L. 1987; amd. Sec. 1, Ch. 31, L. 1989; amd. Sec. 1, Ch. 580, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 580 inserted definition of extended depth auger method; in definition of strip mining inserted "but does not include the extended depth auger method of mining"; and made minor changes in style. Amendment effective July 1, 1993, and terminates June 30, 1997.

15-35-103. *(Temporary)* **Severance tax — rates imposed.** (1) Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit, a severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

(a) After June 30, 1988, and before July 1, 1990:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	17% of value	3% of value
7,000 and over	25% of value	4% of value

(b) After June 30, 1990, and before July 1, 1991:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	13% of value	3% of value

7,000 and over	20% of value	4% of value

(c) After June 30, 1991:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining	Extended Depth Auger Mining
Under 7,000	10% of value	3% of value	7.5% of value
7,000 and over	15% of value	4% of value	7.5% of value

(2) "Value" means the contract sales price.

(3) The formula which yields the greater amount of tax in a particular case shall be used at each point on these schedules.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal he produces in a calendar year, except that if he produces more than 50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(5) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202. *(Terminates June 30, 1997—sec. 4, Ch. 580, L. 1993.)*

15-35-103. *(Effective July 1, 1997)* **Severance tax — rates imposed.** (1) Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit, a severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

(a) After June 30, 1988, and before July 1, 1990:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	17% of value	3% of value
7,000 and over	25% of value	4% of value

(b) After June 30, 1990, and before July 1, 1991:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	13% of value	3% of value
7,000 and over	20% of value	4% of value

(c) After June 30, 1991:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(2) "Value" means the contract sales price.

(3) The formula which yields the greater amount of tax in a particular case shall be used at each point on these schedules.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal he produces in a calendar year, except that if he produces more than 50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(5) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202.

History: En. 84-1314 by Sec. 3, Ch. 525, L. 1975; amd. Sec. 1, Ch. 164, L. 1977; R.C.M. 1947, 84-1314; amd. Sec. 2, Ch. 303, L. 1983; amd. Sec. 7, Ch. 636, L. 1985; amd. Sec. 3, Ch. 608, L. 1987; amd. Sec. 2, Ch. 31, L. 1989; amd. Sec. 2, Ch. 580, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 580 in (1)(c) inserted tax on extended depth auger mining. Amendment effective July 1, 1993, and terminates June 30, 1997.

Cross-References

Property tax — mineral exemptions, 15-6-208.

15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement shall indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and such other information as the department may require. Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the quarter. The completed form in duplicate, with the tax payment, shall be delivered to the department not later than 30 days following the close of the quarter. The form shall be signed by the operator if the operator is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of his mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: En. 84-1315 by Sec. 4, Ch. 525, L. 1975; R.C.M. 1947, 84-1315; amd. Sec. 1, Ch. 334, L. 1981; amd. Sec. 4, Ch. 608, L. 1987.

Cross-References

Coordination with statement required under coal gross proceeds tax, 15-23-704.

15-35-105. Penalty for delinquent tax. The department shall add to the amount of all delinquent severance taxes a penalty of 10% of the delinquent amount plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance tax and penalty. Interest shall be computed from the date the severance tax was due to the date of payment. The department shall mail to the person required to file a quarterly report and pay any severance tax, a letter setting forth the amount of tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a warrant for distraint may be filed. The penalty amount may be waived by the department if reasonable cause for the failure or neglect to file the quarterly statement is provided to the department.

History: En. 84-1316 by Sec. 5, Ch. 525, L. 1975; R.C.M. 1947, 84-1316; amd. Sec. 16, Ch. 439, L. 1981.

Cross-References

Warrant for distraint, Title 15, ch. 1, part 7.

15-35-106. Annual testing of samples. The Montana state bureau of mines and geology shall test coal production subject to this chapter and may make rules governing the collection of test data. A person subject to this chapter shall submit to the bureau on or before August 1 each year a sample of mine-run, "as is" coal from each mine producing that year. Additional samples shall be submitted at the request of the bureau. The bureau shall compute the Btu per pound of each sample received and forward this information to the department prior to September 1 each year.

History: En. 84-1317 by Sec. 6, Ch. 525, L. 1975; R.C.M. 1947, 84-1317.

15-35-107. When value of coal may be imputed — procedure. (1) The department may or shall at the request of the taxpayer impute a value to the coal which approximates market value f.o.b. mine in a case where:

(a) the operator of a coal mine is using the produced coal in an energy-conversion or other manufacturing process;

(b) the operator of a coal mine refines the coal by drying, cleaning, or other processing designed to improve the quality of the coal;

(c) a person sells coal under a contract which is not an arm's-length agreement; or

(d) a person neglects or refuses to file a statement under 15-23-701 or a statement and tax return under this chapter.

(2) For purposes of subsection (1)(b), "market value f.o.b. mine" means the value of the coal subsequent to primary and secondary crushing but prior to drying, cleaning, or other processing.

(3) When imputing value, the department may apply the factors used by the federal government under 26 U.S.C., section 613, or that provision as it may be labeled or amended, in determining gross income from mining or the department may apply any other or additional criteria it considers appropriate. Each subject taxpayer shall upon request by the department furnish a copy of its federal income tax return, with any amendments, filed for the year in which the value of coal is being imputed and copies of the contracts under which it is selling coal at the time. When the department's estimate of market value is contested in any proceeding, the burden of proof is on the contesting party.

History: En. 84-1318 by Sec. 7, Ch. 525, L. 1975; R.C.M. 1947, 84-1318; amd. Sec. 1, Ch. 326, L. 1983.

Cross-References

Estimating value upon failure to file gross proceeds return, 15-23-104.

15-35-108. *(Temporary)* **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17 1/2% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 0% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) beginning July 1, 1993, and ending June 30, 1995, 3 1/3% to a special revenue account to be used by the department of fish, wildlife, and parks for the stabilization and preservation of historic and cultural sites within the state park system;

(l) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates June 30, 1995—sec. 4, Ch. 536, L. 1993.)*

15-35-108. *(Effective July 1, 1995)* **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17 1/2% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates July 1, 2003—sec. 4, Ch. 191, L. 1991.)*

15-35-108. *(Effective July 1, 2003)* **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money

must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17 1/2% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the renewable resource loan debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state.

History: En. 84-1309.1 by Sec. 2, Ch. 432, L. 1973; amd. Sec. 1, Ch. 250, L. 1974; amd. Sec. 4, Ch. 501, L. 1975; amd. Sec. 3, Ch. 502, L. 1975; amd. and redes. 84-1319 by Sec. 8, Ch. 525, L. 1975; amd. Sec. 2, Ch. 156, L. 1977; amd. Sec. 1, Ch. 540, L. 1977; amd. Sec. 2, Ch. 549, L. 1977; R.C.M. 1947, 84-1319; amd. Sec. 1, Ch. 653, L. 1979; amd. Sec. 1, Ch. 694, L. 1979; amd. Sec. 1, Ch. 479, L. 1981; amd. Sec. 43, Ch. 505, L. 1981; amd. Sec. 3, Ch. 281, L. 1983; amd. Sec. 5, Ch. 541, L. 1983; amd. Sec. 1, Ch. 246, L. 1985; amd. Sec. 1, Ch. 715, L. 1985; amd. Sec. 1, Ch. 3, Sp. L. June 1986; amd. Sec. 1, Ch. 19, Sp. L. June 1986; amd. Sec. 1, Ch. 662, L. 1987; amd. Sec. 17, Ch. 83, L. 1989; amd. Sec. 1, Ch. 626, L. 1989; amd. Sec. 4, Ch. 11, Sp. L. June 1989; amd. Sec. 13, Ch. 16, L. 1991; amd. Sec. 3, Ch. 191, L. 1991; amd. Sec. 1, Ch. 615, L. 1991; amd. Sec. 1, Ch. 8, Sp. L. January 1992; amd. Sec. 1, Ch. 16, Sp. L. January 1992; amd. Sec. 5, Ch. 455, L. 1993; amd. Sec. 1, Ch. 536, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 455 near middle of introductory clause, after "must", inserted "in accordance with the provisions of 15-1-501(6)" and after "allocated" deleted "according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated". Amendment effective April 21, 1993.

Chapter 536 in (3)(e) reduced from 3 1/3% to 0% the amount paid to trust fund for parks; and inserted (3)(k) establishing account for historic and cultural sites. Amendment effective July 1, 1993, and terminates June 30, 1995.

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Cross-References

Coal tax trust fund, Art. IX, sec. 5, Mont. Const.

Genetic engineering technology research and development account — Montana State University, 17-2-131.

Permissible investments of funds allocated to coal tax trust fund, 17-6-211.

Appropriation to state equalization aid, 20-9-343.

Duties of advisory committee — cultural and aesthetic projects, Title 22, ch. 2, part 3.

Cultural and aesthetic projects grants, 22-2-301.

Acquisition of certain state parks, monuments, or historical sites, 23-1-108.

County land planning assistance, 90-1-108.

Creation of alternative energy research development and demonstration account, 90-4-103.

Disposition of funds allocated to the local impact and education trust fund account and the coal area highway improvement account, Title 90, ch. 6, part 2.

Coal area highway improvement account created, 90-6-202.

Local impact and education trust fund account created, 90-6-202.

15-35-109. Repealed. Sec. 1, Ch. 407, L. 1981.

History: En. 84-1325 by Sec. 18, Ch. 525, L. 1975; R.C.M. 1947, 84-1325.

15-35-110. Renumbered 15-35-121 by Code Commissioner, 1983.

15-35-111. Renumbered 15-35-122 by Code Commissioner, 1983.

15-35-112. Deficiency assessment — review — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 13, Ch. 811, L. 1991.

15-35-113. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-35-112 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the

taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983.

15-35-114. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-35-115 through 15-35-120 reserved.

15-35-121. Penalties for neglect or false statement. A person who fails, neglects, or refuses to file any statement required under this chapter or who makes a false statement commits a misdemeanor. A person convicted under this section shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 84-1324 by Sec. 13, Ch. 525, L. 1975; R.C.M. 1947, 84-1324; MCA 1981, 15-35-110; redes. 15-35-121 by Code Commissioner, 1983.

15-35-122. Rulemaking authority. The department of revenue may adopt rules necessary for the taxation of property under this chapter.

History: En. Sec. 32, Ch. 581, L. 1979; MCA 1981, 15-35-111; redes. 15-35-122 by Code Commissioner, 1983.

Part 2

New Coal Production Incentive Tax Credit Act

15-35-201. Short title. This part may be cited as the "New Coal Production Incentive Tax Credit Act of 1985".

History: En. Sec. 1, Ch. 636, L. 1985.

15-35-202. New coal production incentive tax credit allowed — application limited. (1) A coal mine operator is entitled to a new coal production incentive tax credit against the tax imposed under 15-35-103 of:

(a) 40% for incremental production sold after June 30, 1988, and before July 1, 1990; and

(b) 25% for incremental production sold after June 30, 1990, and before July 1, 1991.

(2) A coal mine operator is entitled to a new coal production incentive tax credit against the tax imposed under 15-35-103 on incremental production for the entire term of an agreement, except as provided in subsection (3), and is entitled to adjustment of the base consumption level and the base production level, as defined in 15-35-102, if the incremental production resulted from coal purchases under:

(a) an existing agreement which was extended after December 31, 1984, and before July 1, 1991, for at least a 5-year period; or

(b) a new agreement that was executed after December 31, 1984, and before July 1, 1991.

(3) No credit may be claimed for coal produced prior to January 1, 1985.

History: En. Sec. 3, Ch. 636, L. 1985; amd. Sec. 5, Ch. 608, L. 1987; amd. Sec. 3, Ch. 31, L. 1989.

15-35-203. Calculation and application of credit. (1) The amount of new coal production incentive tax credit that a coal mine operator may claim against the tax imposed in 15-35-103 is calculated by:

(a) determining the incremental production for each of his qualified purchasers that was produced during a calendar year;

(b) distributing the incremental production among the quarters in the calendar year in the same proportion as the total volume of coal sold each quarter to each respective purchaser and summing the amounts for all purchasers to determine the coal mine operator's incremental production for each quarter;

(c) determining the arithmetic average severance tax per ton calculated prior to application of the credit on coal sold to each qualified purchaser each quarter during the calendar year;

(d) multiplying the incremental production for a quarter for a purchaser by the average severance tax per ton for that purchaser and multiplying the total by the appropriate percentage as provided in 15-35-202 for each quarter; and

(e) totaling the amount so calculated for all qualified purchasers for all four quarters of the calendar year.

(2) When filing the quarterly statement required in 15-35-104, a coal mine operator may claim against the coal severance tax calculated for that quarter

an amount equal to 25% of the new coal production incentive tax credit allowed on incremental production that occurred during the previous calendar year.

(3) If in any calendar year a purchaser exceeds his base consumption level and he has purchased from more than one Montana coal mine operator during the year, the credit on the incremental production must be divided among the operators on a pro rata basis. To determine each coal mine operator's pro rata share of the tax credit, each operator shall divide his incremental production by the sum of all coal mine operators' incremental production for that purchaser and multiply the quotient by the purchases in excess of the base consumption level for that purchaser.

(4) Neither a coal mine operator nor a purchaser is entitled to a direct payment for the credit allowed in 15-35-202. A credit terminates if not taken during the year following the year in which the incremental production occurred.

(5) Each coal mine operator must reduce the delivered price of coal sold to each qualified purchaser by an amount equal to the credit received on incremental production sold to that purchaser.

History: En. Sec. 4, Ch. 636, L. 1985; amd. Sec. 6, Ch. 608, L. 1987.

15-35-204. Reporting requirements for credit — duty of department. (1) Every Montana coal mine operator must provide to the department:

(a) on or before April 30, 1985, a list showing the amount of coal produced and sold in calendar years 1983 and 1984 to every purchaser, including purchasers who obtained coal from the coal mine operator through a broker; and

(b) with the quarterly statement required by 15-35-104, a list of the number of tons produced and sold to every purchaser during the quarter and the severance tax calculated prior to the application of the credit on these tons.

(2) To be eligible for the tax credit provided for in 15-35-202, a coal mine operator must furnish to the department:

(a) on or before April 30, 1985, copies of all existing coal sales agreements;

(b) with the quarterly statement required by 15-35-104, a copy of any new coal sales agreements or extensions of existing agreements executed during the quarter;

(c) on or before January 31 of each year:

(i) a list of incremental production for all qualified purchasers during the previous calendar year;

(ii) a written statement from each qualified purchaser verifying the volume of coal purchased in that year from all Montana coal mine operators; and

(iii) the necessary information on incremental production purchased through a broker to verify that such incremental production did not cause a reduction in the base consumption level of any other purchaser of Montana coal; and

(d) any other data, reports, evidence, or production data that may be necessary for the department to determine whether a purchaser is a qualified purchaser and the base consumption level for each purchaser.

(3) By July 1, 1985, the department shall prepare and publish for informational purposes only an unaudited compilation of the base production level for each coal mine operator and a compilation of the base consumption level for each purchaser.

(4) Any coal mine operator or purchaser may, for the purpose of determining the eligibility of coal production for the new production incentive tax credit, file with the department a petition for a declaratory ruling as provided in 2-4-501. The department shall issue a ruling on the petition within 90 days of the date the petition was filed with the department.

History: En. Sec. 5, Ch. 636, L. 1985.

15-35-205. Returns and taxpayer information open to public inspection — certain exceptions. (1) All information filed with the department in accordance with 15-35-204 is public record and open to public inspection, except the information required under 15-35-204(1)(b) and the coal sales agreements specified in 15-35-204(2)(a) and (2)(b).

(2) Except during proceedings before the state tax appeal board pursuant to 15-2-201, the information required under 15-35-204(1)(b) and the coal sales agreements specified in 15-35-204(2)(a) and (2)(b) are open to inspection only upon the order of the governor, under rules to be prescribed by the department, or upon order of a court of competent jurisdiction.

History: En. Sec. 6, Ch. 636, L. 1985.

Cross-References

Access to public documents, Art. II, sec. 9, Mont. Const.

CHAPTER 36

OIL AND GAS SEVERANCE TAX

Part 1 — General Provisions

15-36-101. Definitions and rate of tax — state severance tax — local government severance tax — assessment of nonworking interest owner — exemption.
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Chapter Cross-References

Oil and gas net proceeds tax, 15-23-601.

Resource indemnity trust tax, Title 15, ch. 38.

Privilege and license tax on oil and gas producers, 82-11-131.

Part 1
General Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-36-101. Definitions and rate of tax — state severance tax — local government severance tax — assessment of nonworking interest owner — exemption. (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a state severance tax for deposit in the general fund of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for replacement of property taxes formerly levied on net proceeds. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in subsections (1)(b), (1)(c), and (1)(d), a 5% state severance tax on the gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value, as defined in subsection (6)(a)(ii), of all the petroleum and other mineral or crude oil produced by the person other than new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the gross taxable value, as defined in subsection (6)(a)(ii), of all natural gas produced by the person other than new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) a 2.5% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (6)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person other than new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the board of oil and gas conservation. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the board; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;
(B) steam drive injection;
(C) micellar/emulsion flooding;
(D) in situ combustion;
(E) polymer augmented water flooding;
(F) cyclic steam injection;
(G) alkaline or caustic flooding;
(H) carbon dioxide water flooding;
(I) immiscible carbon dioxide displacement; or
(J) any other method approved by the department as a tertiary recovery method.

(d) a 5% local government severance tax on the gross taxable value, as defined in subsection (6)(a)(ii), of all petroleum and other mineral or crude oil produced by the person other than new production produced by a stripper well, as defined in subsection (7).

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the board, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the board must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(2) and under subsections (1)(a) through (1)(d) of this section.

(4) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral or crude oil, or natural gas within this state within the meaning of this section.

(5) Every person required to pay the state or local government severance tax under this section shall pay the tax in full for the person's own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(6) For purposes of this section, the following definitions apply:

(a) (i) "Gross taxable value", for the purpose of computing the state severance tax, means the gross value of the product as determined in 15-36-103.

(ii) "Gross taxable value", for the purpose of computing the local government severance tax, means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit.

(7) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels a day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R.C.M. 1921; amd. Sec. 1, Ch. 67, L. 1923; re-en. Sec. 2398, R.C.M. 1935; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959; amd. Sec. 1, Ch. 359, L. 1969; amd. Sec. 1, Ch. 245, L. 1975; amd. Sec. 1, Ch. 262, L. 1975; amd. Sec. 1, Ch. 412, L. 1975; amd. Sec. 8, Ch. 156, L. 1977; amd. Sec. 1, Ch. 160, L. 1977; amd. Sec. 3, Ch. 256, L. 1977; R.C.M. 1947, 84-2202; amd. Sec. 1, Ch. 536, L. 1981; amd. Sec. 1, Ch. 671, L. 1983; amd. Sec. 1, Ch. 724, L. 1985; amd. Sec. 3, Ch. 656, L. 1987; amd. Sec. 1, Ch. 589, L. 1989; amd. Sec. 78, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 3, Sp. L. May 1990; amd. Exec. Ord. 12-90, implementing Sec. 7, Ch. 656, L. 1987; amd. Sec. 7, Ch. 267, L. 1991; amd. Sec. 1, Ch. 597, L. 1991; amd. Sec. 1, Ch. 299, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 299 in (1), near end of first sentence after "severance tax for", substituted "deposit in the general fund" for "the exclusive use and benefit" and at end substituted "replacement of property taxes formerly levied on net proceeds" for "the exclusive use and benefit of local government"; and made minor changes in style. Amendment effective April 9, 1993.

Repayment of Foundation Program Money: Section 2, Ch. 299, L. 1993, provided: "(1) Beginning July 1, 1993, and by June 30, 1998, Saco School Districts No. 12A and B, Whitewater School Districts No. 20AA and D, and Malta School Districts No. 14 and A, Phillips County, shall repay any overdistribution of foundation program money for school fiscal year 1991 attributable to an overdistribution of local government severance tax revenue in the following amounts, plus interest as provided in subsection (2), based on an annual repayment schedule approved by the superintendent of public instruction:

Saco School District No. 12A	$135,682
Saco School District No. B	102,003
Whitewater School District No. 20AA	121,924
Whitewater School District No. D	73,196
Malta Elementary School District No. 14	12,923
Malta High School District No. A	8,086

(2) A repayment amount under subsection (1) must include interest at the average annual short-term investment pool rate of the preceding fiscal year."

Retroactive Applicability: Section 3, Ch. 299, L. 1993, provided that this section applies retroactively, within the meaning of 1-2-109, to August 11, 1989.

15-36-102. Quarterly payment of tax — delayed payment of local government severance tax. (1) Except as provided in subsection (2), severance tax must be paid in quarterly installments for the quarterly periods ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of the tax for each quarterly period must be paid to the department of revenue within 60 days after the end of each quarterly period.

(2) Local government severance tax must be paid in quarterly installments 1 year after the end of each quarter for which a statement is completed as required by 15-36-105.

History: En. Sec. 3, Ch. 266, L. 1921; re-en. Sec. 2399, R.C.M. 1921; amd. Sec. 2, Ch. 67, L. 1923; re-en. Sec. 2399, R.C.M. 1935; amd. Sec. 8, Ch. 14, L. 1941; amd. Sec. 113, Ch. 516, L. 1973; amd. Sec. 2, Ch. 245, L. 1975; amd. Sec. 2, Ch. 262, L. 1975; R.C.M. 1947, 84-2203; amd. Sec. 79, Ch. 11, Sp. L. June 1989.

15-36-103. Determination of gross value of product. The total gross value of all petroleum and other mineral or crude oil or natural gas produced each year shall be determined by taking the total number of barrels or cubic feet thereof produced each month during such year at the average value at the mouth of the well during the month the same is produced, as determined by the department of revenue; provided, however, that in computing the total number of barrels of petroleum and other mineral or crude oil or cubic feet of gas produced, there shall be deducted therefrom so much thereof as is used by such person in connection with the operation of the well from which said oil or gas is produced or for pumping said petroleum or other mineral or crude oil or gas from the said well to a tank or pipeline.

History: En. Sec. 4, Ch. 266, L. 1921; re-en. Sec. 2400, R.C.M. 1921; amd. Sec. 3, Ch. 67, L. 1923; re-en. Sec. 2400, R.C.M. 1935; amd. Sec. 114, Ch. 516, L. 1973; amd. Sec. 3, Ch. 245, L. 1975; R.C.M. 1947, 84-2204.

15-36-104. Record of product — carriers to furnish data. Every such person shall keep a record in such form as the department of revenue may require of all petroleum and other mineral or crude oil or natural gas extracted or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection by the department or its agents or employees. It shall be the duty of railroad, pipeline, and transportation companies carrying crude or mineral oil or natural gas to furnish to the department, whenever requested to do so, all data relative to the shipment of such products that may be required to properly enforce the provisions of this part. The failure of any railroad, pipeline, or transportation company to comply with the provisions of this section shall make such company liable to a penalty of $100 for each day it fails to furnish such statement.

History: En. Sec. 6, Ch. 266, L. 1921; re-en. Sec. 2402, R.C.M. 1921; amd. Sec. 5, Ch. 67, L. 1923; re-en. Sec. 2402, R.C.M. 1935; amd. Sec. 116, Ch. 516, L. 1973; amd. Sec. 4, Ch. 245, L. 1975; amd. Sec. 9, Ch. 156, L. 1977; R.C.M. 1947, 84-2206.

15-36-105. Statement to accompany payment — records — collection of tax — refunds. (1) Each person shall, within 60 days after the end of each following quarter, complete on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum and other mineral or crude oil or cubic feet of natural gas produced or extracted by the person in the state during each month of the quarter and during the whole quarter, the average value of the production during each month, and the total value of the production for the whole quarter, together with the total amount due to the state as severance taxes and local government severance taxes for the quarter, and shall within such 60 days deliver the statement and, except as provided in 15-36-102(2) and 15-36-121, pay to the department the amount of the taxes shown by the statement to be due to the state for the quarter for which the statement is made. The statement must be signed by the individual or the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company, or syndicate making the statement. Any person engaged in carrying on business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all operations in one statement. The department shall receive and file all statements and collect and receive from the person making and filing a statement the amount of tax payable by the person, if any, as appears in the statement.

(2) (a) It is the duty of the department to examine each of the statements and compute the taxes imposed under this chapter, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer making the statement for the quarter for which the statement is filed.

(b) If the state severance tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department after written notice of the amount of the deficiency is mailed by the department to the taxpayer pursuant to 15-1-211. The taxpayer may seek review of the department's determination pursuant to 15-1-211. If the state severance tax imposed is less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters or refunded if there is no subsequent tax liability.

(c) If the local government severance tax found to be due is greater than the amount paid, the excess is due at the time for payment provided for in 15-36-102(2). If the local government severance tax imposed is less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters or refunded if there is no subsequent tax liability.

(3) If the state severance tax or the local government severance tax is not paid on or before the due date, there must be assessed a penalty of 10% of the amount of the tax not paid, unless it is shown that the failure was due to reasonable cause and not due to neglect. If the state severance tax or the local government severance tax is not paid when due, interest must be added to the tax at the rate of 1% a month or fraction thereof, computed on the total amount of the state severance tax or local government severance tax and penalty from the due date until paid.

History: En. Sec. 7, Ch. 266, L. 1921; re-en. Sec. 2403, R.C.M. 1921; amd. Sec. 6, Ch. 67, L. 1923; re-en. Sec. 2403, R.C.M. 1935; amd. Sec. 1, Ch. 449, L. 1973; amd. Sec. 117, Ch. 516, L. 1973; amd. Sec. 5, Ch. 245, L. 1975; amd. Sec. 4, Ch. 256, L. 1977; R.C.M. 1947, 84-2207; amd. Sec. 2, Ch. 334, L. 1981; amd. Sec. 1, Ch. 258, L. 1985; amd. Sec. 80, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 597, L. 1991; amd. Sec. 14, Ch. 811, L. 1991.

Cross-References

Deficiency assessment procedure, 15-36-113.

15-36-106. Falsifying or failing to file statements unlawful. It shall be unlawful for any such person to fail, neglect, or refuse to file any statement or certificate required by this part in the manner or within the time herein required or to make such statement false in any particular.

History: En. Sec. 8, Ch. 266, L. 1921; re-en. Sec. 2404, R.C.M. 1921; amd. Sec. 7, Ch. 67, L. 1923; re-en. Sec. 2404, R.C.M. 1935; R.C.M. 1947, 84-2208.

15-36-107. Procedure to compute tax in absence of statement — penalty and interest. If a person fails to file any statement required by 15-36-105 within the time required, the department of revenue shall, immediately after such time has expired, ascertain the number of barrels of petroleum and other mineral or crude oil or cubic feet of gas extracted and produced by the person in this state during the quarter and during each month of the quarter and the average value of the barrels produced during each month or the average value of cubic feet of gas extracted and produced during each month and fix the amount of the state severance taxes due to the state or the amount of local government severance taxes due from the person for the quarter plus a penalty of 10% of the tax due plus interest at the rate of 1% per month or fraction of a month computed on the total amount of state or local government severance taxes and penalty. Interest must be computed from the date the severance taxes were due to the date of payment. The department shall mail to the person required to file a quarterly statement and pay severance taxes a letter setting forth the amount of state severance tax or local government severance tax, penalty, and interest due. The letter must contain a statement that if payment is not made, a warrant for distraint may be filed. The department may waive the 10% penalty if reasonable cause for the failure to file the statement required by 15-36-105 is provided to the department.

History: En. Sec. 9, Ch. 266, L. 1921; re-en. Sec. 2405, R.C.M. 1921; amd. Sec. 8, Ch. 67, L. 1923; re-en. Sec. 2405, R.C.M. 1935; amd. Sec. 1, Ch. 328, L. 1969; amd. Sec. 118, Ch. 516, L. 1973; amd. Sec. 6, Ch. 245, L. 1975; amd. Sec. 3, Ch. 262, L. 1975; R.C.M. 1947, 84-2209; amd. Sec. 17, Ch. 439, L. 1981; amd. Sec. 3, Ch. 93, L. 1983; amd. Sec. 2, Ch. 258, L. 1985; amd. Sec. 3, Ch. 597, L. 1991.

15-36-108. Warrant for distraint. If all or part of the state severance tax or the local government severance tax imposed by this part is not paid when due, the department of revenue may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-2209.1 by Sec. 4, Ch. 262, L. 1975; amd. Sec. 10, Ch. 156, L. 1977; R.C.M. 1947, 84-2209.1; amd. Sec. 18, Ch. 439, L. 1981; amd. Sec. 4, Ch. 597, L. 1991.

15-36-109. Penalty for violations. Violation of any of the provisions of this part is a misdemeanor and punishable by a fine of not exceeding $1,000 or by imprisonment in the county jail for not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 11, Ch. 266, L. 1921; re-en. Sec. 2407, R.C.M. 1921; re-en. Sec. 2407, R.C.M. 1935; R.C.M. 1947, 84-2210; amd. Sec. 27, Ch. 581, L. 1979.

15-36-110. Severance tax supplemental. The severance taxes herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this part.

History: En. Sec. 12, Ch. 266, L. 1921; re-en. Sec. 2408, R.C.M. 1921; re-en. Sec. 2408, R.C.M. 1935; R.C.M. 1947, 84-2211.

15-36-111. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 5, Ch. 266, L. 1921; re-en. Sec. 2401, R.C.M. 1921; amd. Sec. 4, Ch. 67, L. 1923; re-en. Sec. 2401, R.C.M. 1935; amd. Sec. 115, Ch. 516, L. 1973; R.C.M. 1947, 84-2205.

15-36-112. Disposition of oil and gas state and local government severance taxes — calculation of unit value for local government severance tax. (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each taxing unit.

(2) For purposes of the distribution of local government severance taxes collected under this chapter, the department shall determine the unit value of oil and gas for each taxing unit as follows:

(a) The unit value for petroleum and other mineral or crude oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that taxing unit in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that taxing unit during 1988, excluding new and interim production.

(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that taxing unit during 1988, excluding new and interim production.

(3) The state and local government severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4).

(b) The state severance tax is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) Except as provided in subsection (6), the county treasurer shall distribute the money received under subsection (4) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of local government severance tax money that would have gone to a taxing unit, as provided in subsection (5), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the local government severance taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the local government severance taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the local government severance taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

History: En. Sec. 1, Ch. 700, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 2, Ch. 114, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 707, L. 1983; amd. Sec. 11, Ch. 703, L. 1985; amd. Sec. 13, Ch. 611, L. 1987; amd. Sec. 81, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 3, Sp. L. May 1990; amd. Sec. 2, Ch. 610, L. 1991; amd. Sec. 28, Ch. 10, L. 1993; amd. Sec. 6, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 10 in (6)(a), (7), and (7)(a) removed brackets around "local government severance"; and made minor changes in style.

Chapter 455 near middle of (3), after "chapter", substituted "must, in accordance with the provisions of 15-1-501(6), be" for "are"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Cross-References

Disposition of tax proceeds, 15-1-501.

15-36-113. Deficiency assessment — review — interest. (1) When the department of revenue determines that the amount of the state severance tax or local government severance tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional state severance tax or local government severance tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 5, Ch. 597, L. 1991; amd. Sec. 15, Ch. 811, L. 1991.

15-36-114. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of state severance tax or local government severance tax, penalty, or interest due for any taxable period is less than the amount paid, the amount of the overpayment shall be credited against any state severance tax or local government severance tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-36-113 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983; amd. Sec. 6, Ch. 597, L. 1991.

15-36-115 through 15-36-119 reserved.

15-36-120. Tribal royalties exempt. Royalties received by an Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a-396g (1983)) are exempt from taxation.

History: En. Sec. 1, Ch. 536, L. 1989.

Cross-References

Oil and gas net proceeds tax — tribal royalties exempt, 15-23-631.

Resource indemnity trust tax — tribal royalties exempt, 15-38-121.

15-36-121. Exemption from state severance tax — imposition of local government severance tax. (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state, to lessen Montana's dependence on imported natural gas, and to encourage the exploration for and development and production of natural gas, petroleum, and other mineral and crude oil within the state.

(2) All the natural gas produced from any well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current

year shall be taxed as provided in this section. Production must be determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. The first 30,000 cubic feet of average daily production per well is exempt from all of the state severance tax imposed by 15-36-101. The first 30,000 cubic feet of average daily production per well is subject to a local government severance tax of 10% on the gross taxable value, as defined in 15-36-101(6)(a)(ii). Everything over 30,000 cubic feet of gas produced is taxed at 1.59% on the gross taxable value for the state severance tax plus a local government severance tax of 10% on the gross taxable value, as defined in 15-36-101(6)(a)(ii).

(3) Notwithstanding the provisions of subsection (2), all reporting requirements under the state severance tax remain in effect.

History: En. 84-2212, 84-2213 by Secs. 1, 2, Ch. 256, L. 1977; R.C.M. 1947, 84-2212, 84-2213(part); amd. Sec. 1, Ch. 265, L. 1981; amd. Sec. 1, Ch. 124, L. 1983; amd. Secs. 4, 6, Ch. 656, L. 1987; amd. Sec. 82, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 3, Sp. L. May 1990; amd. Exec. Ord. 9-90 and 12-90, implementing Sec. 7, Ch. 656, L. 1987; amd. Sec. 7, Ch. 597, L. 1991.

Cross-References

Exemption from one-half of net proceeds tax, 15-23-612.

15-36-122. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-36-123 through 15-36-125 reserved.

15-36-126. *(Temporary)* **Surtax.** (1) Each person required to pay the severance tax under this chapter on oil and gas production, other than production from a stripper well and production from a natural gas well taxed as provided in 15-36-121, shall pay, in addition to the tax liability computed as required in 15-36-101, a surtax of 7% of the tax liability.

(2) The additional tax must, in accordance with the provisions of 15-1-501(6), be deposited to the credit of the state general fund.

History: En. Sec. 5, Ch. 15, Sp. L. July 1992; amd. Sec. 1, Ch. 368, L. 1993; amd. Sec. 7, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 368 in (1), after "stripper well", inserted "and production from a natural gas well taxed as provided in 15-36-121" and after "15-36-101" deleted "and 15-36-121". Amendment effective April 15, 1993.

Chapter 455 in (2), after "must", inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Effective Date — Retroactive Applicability: Section 2, Ch. 268, L. 1993, provided: "[This act] is effective on passage and approval [approved April 15, 1993] and applies retroactively, within the meaning of 1-2-109, to natural gas production occurring after June 30, 1992."

Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Retroactive Applicability — Termination: Section 39(2), Ch. 15, Sp. L. July 1992, provided that this section applies to production occurring after June 30, 1992, and before July 1, 1993. This section terminates upon receipt of taxes on production occurring prior to July 1, 1993.

CHAPTER 37

MINING LICENSE TAXES

Part 1 — Metalliferous Mines

15-37-101. License tax on metal mines.
15-37-102. Gross value of metal mine yield — computation.
15-37-103. Rate of tax.
15-37-104. Mine operator's statement of gross value — reports and sampling.
15-37-105. Computation and payment of tax.
15-37-106. Procedure in case of failure to file statements.
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15-37-110. Review of determination of gross value of product or amount of tax.
15-37-111. License tax supplemental.
15-37-112. Returns of dissolved corporations.
15-37-113. Repealed.
15-37-114. Deficiency assessment — review — interest.
15-37-115. Credit for overpayment — interest on overpayment.
15-37-116. Statute of limitations.
15-37-117. Disposition of metalliferous mines license taxes.
15-37-118 through 15-37-125 reserved.
15-37-126. Terminated.

Part 2 — Micaceous Mineral Mines

15-37-201. License tax on micaceous mines.

15-37-202. Quarterly payment.
15-37-203. Records.
15-37-204. Quarterly return.
15-37-205. Procedure on failure to file statement.
15-37-206. Collection — warrant for distraint.
15-37-207. Disposition of proceeds of tax.
15-37-208. Repealed.
15-37-209. Renumbered 15-37-221 by Code Commissioner, 1983.
15-37-210. Deficiency assessment — review — interest.
15-37-211. Credit for overpayment — interest on overpayment.
15-37-212. Statute of limitations.
15-37-213 through 15-37-220 reserved.
15-37-221. Penalty for violations.
15-37-222 through 15-37-225 reserved.
15-37-226. Terminated.

Chapter Cross-References

Mines net proceeds tax, Title 15, ch. 23, part 5.

Metal mines gross proceeds tax, Title 15, ch. 23, part 8.

Resource indemnity trust tax, Title 15, ch. 38.

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

Part 1
Metalliferous Mines

Part Cross-References

Disposition of tax proceeds, 15-1-501.

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-37-101. License tax on metal mines. (1) Every person who engages in or carries on the business of working or operating any mine or mining property in the state of Montana from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones of any kind shall be mined, extracted, or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for each year when engaged in or carrying on such business, work, or operations pay to the department of revenue for the exclusive use and benefit of the state of Montana and impacted local government units a license tax for engaging in and carrying on such business, work, or operation in this state.

(2) Nothing contained in this part shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property to pay such license taxes, nor shall any discovery work required to be done in prospecting for or locating any mining claims or any annual assessment work or work required in the obtaining of title to mining property from the United States or required by the laws of the United States or of this state in order to hold possessory title to any mining claims be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property.

History: En. Sec. 2, Initiative No. 28, 1925; re-en. Sec. 2344.2, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1975; R.C.M. 1947, 84-2002; amd. Sec. 5, Ch. 619, L. 1983.

15-37-102. Gross value of metal mine yield — computation. The "annual reporting date", as used in this part, means the last day of the calendar year. The "annual gross value of product", as used in this part, means the receipts received, as defined in 15-23-801, from all merchantable metals or concentrate containing metals or precious and semiprecious gems and stones extracted or produced each calendar year from any mine or mining property in the state or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from the mine or mining property or from tailings resulting from the smelting, reduction, or treatment of the ores.

History: En. Sec. 3, Initiative No. 28, 1925; re-en. Sec. 2344.3, R.C.M. 1935; amd. Sec. 101, Ch. 516, L. 1973; amd. Sec. 4, Ch. 156, L. 1977; R.C.M. 1947, 84-2003; amd. Sec. 1, Ch. 227, L. 1983; amd. Sec. 1, Ch. 128, L. 1989; amd. Sec. 2, Ch. 672, L. 1989.

15-37-103. Rate of tax. (1) The annual license tax to be paid by a person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced shall be an amount computed on the gross value of product which may have been derived by the person from mining business, work, or operation within this state during the calendar year immediately preceding.

(2) Concentrate shipped to a smelter, mill, or reduction work is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	0%
more than $250,000	1.81% of the increment

(3) Gold, silver, or any platinum-group metal that is dore, bullion, or matte and that is shipped to a refinery is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	0%
more than $250,000	1.6% of the increment

History: En. Sec. 4, Initiative No. 28, 1925; re-en. Sec. 2344.4, R.C.M. 1935; amd. Sec. 1, Ch. 220, L. 1957; amd. Sec. 1, Ch. 176, L. 1959; amd. Sec. 1, Ch. 9, Ex. L. 1969; amd. Sec. 1, Ch. 392, L. 1971; amd. Sec. 2, Ch. 126, L. 1975; amd. Sec. 5, Ch. 156, L. 1977; R.C.M. 1947, 84-2004; amd. Sec. 6, Ch. 619, L. 1983; amd. Sec. 3, Ch. 672, L. 1989.

15-37-104. Mine operator's statement of gross value — reports and sampling. (1) Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals, precious or semiprecious gems or stones are produced must, not later than March 31 following the end of each calendar year when engaged in or carrying on any mining business, work, or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by the person during the calendar year immediately preceding. If good cause is shown, the department may grant a reasonable extension of the time for filing statements. The statement shall be in the form prescribed by the department of revenue and shall show the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which the ore or concentrate has been shipped or sold during the period covered by the statement and other information as the department may require;

(e) the gross yield of the ores, concentrates, mineral products, or deposits in constituents of commercial value, such as the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of the ores, concentrates, or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the annual gross value of product in dollars and cents.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore or concentrate is shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property.

History: En. Sec. 5, Initiative No. 28, 1925; re-en. Sec. 2344.5, R.C.M. 1935; amd. Sec. 102, Ch. 516, L. 1973; amd. Sec. 3, Ch. 126, L. 1975; R.C.M. 1947, 84-2005; amd. Sec. 2, Ch. 288, L. 1981; amd. Sec. 2, Ch. 227, L. 1983; amd. Sec. 2, Ch. 128, L. 1989; amd. Sec. 4, Ch. 672, L. 1989.

15-37-105. Computation and payment of tax. (1) The tax due under this part is computed according to 15-37-103 and is due and payable on or before March 31 of each year for the products produced in the preceding calendar year. The tax due under this part becomes delinquent as of midnight on March 31 of the year immediately following the production year. If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest at a rate of 1% a month or any part thereof.

(2) If any person has sold or otherwise disposed of any of the mine's products at a price substantially below the true market price of the product at the time and place of sale or disposal, then the department shall compute the gross value of the portion of the mine's product sold or disposed of substantially below the market price. The gross value shall be based upon the quotations of the price of the mine's product in New York City at the time the portion of the product was sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York, or some other standard publication, giving the market reports for the year covered by the statement. If there is no quotation covering any particular product, then the department shall fix the value of the gross product or portion of the gross product that was sold or otherwise disposed of

at a price substantially below the true market price at the time and place of sale or disposal in a manner as may seem to be equitable.

History: **En. Sec. 6, Initiative No. 28, 1925; re-en. Sec. 2344.6, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1959; amd. Sec. 103, Ch. 516, L. 1973; amd. Sec. 4, Ch. 126, L. 1975; R.C.M. 1947, 84-2006; amd. Sec. 3, Ch. 227, L. 1983; amd. Sec. 3, Ch. 128, L. 1989; amd. Sec. 5, Ch. 672, L. 1989.**

15-37-106. Procedure in case of failure to file statements. If any person shall fail, refuse, or neglect to make and file the required annual statement of gross yield for a production year on or before March 31 of the year immediately following the production year, the department of revenue shall, immediately after the time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information which the department may be able to obtain the total gross value of product of the person from the business during the calendar year immediately preceding the year in which the license tax is to be paid. The department shall make and file a statement showing the amount of the gross value of product and shall ascertain, determine, compute, and assess the amount of the license taxes due from and to be paid by the person and shall immediately give notice to the person in the same manner as though the statement had been filed within time. The department shall proceed to collect the license tax, along with the same penalty and interest as provided for other delinquencies.

History: **En. Sec. 8, Initiative No. 28, 1925; re-en. Sec. 2344.8, R.C.M. 1935; amd. Sec. 104, Ch. 516, L. 1973; amd. Sec. 6, Ch. 126, L. 1975; R.C.M. 1947, 84-2008; amd. Sec. 4, Ch. 227, L. 1983; amd. Sec. 4, Ch. 128, L. 1989; amd. Sec. 6, Ch. 672, L. 1989.**

15-37-107. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: **En. 84-2008.1 by Sec. 10, Ch. 126, L. 1975; amd. Sec. 6, Ch. 156, L. 1977; R.C.M. 1947, 84-2008.1; amd. Sec. 19, Ch. 439, L. 1981.**

15-37-108. Delinquent taxes — penalty. All license taxes assessed under the provisions of this part shall become delinquent if not paid on or before midnight of March 31 of the year immediately following the production year. The department shall add to the amount of delinquent metalliferous mines tax a penalty of 10%. The whole amount of license tax, together with penalty, shall bear interest at the rate of 1% per month or fraction thereof. Interest shall be computed from the date the tax becomes delinquent until it is paid. The department may waive the 10% penalty if it determines that a reasonable cause exists for failure to pay the tax on or before March 31 of the year immediately following the production year.

History: **En. Sec. 7, Initiative No. 28, 1925; re-en. Sec. 2344.7, R.C.M. 1935; amd. Sec. 2, Ch. 165, L. 1959; amd. Sec. 5, Ch. 126, L. 1975; R.C.M. 1947, 84-2007; amd. Sec. 5, Ch. 227, L. 1983; amd. Sec. 5, Ch. 128, L. 1989; amd. Sec. 7, Ch. 672, L. 1989.**

Cross-References

Deficiency assessment procedure, 15-37-114.

15-37-109. False or erroneous statements — investigation. (1) Should the director of the department of revenue have reason to believe that any statement and return is false or erroneous in any particular, he may require the person or, if made by a corporation, association, or company, the officers thereof and the employees of any such person, corporation, association, or company to appear before the director of revenue or his agent and testify concerning the same and any statement contained therein and may examine all books, records, papers, and documents of such person pertaining to such business, upon giving 5 days' written notice to such persons or officers or employees thereof having custody of such books, records, papers, and documents. Any person failing, refusing, or neglecting to so appear or refusing to be sworn or to testify or refusing to answer any material question propounded by the director or any of his employees or refusing to permit the director or his employees to examine such books, records, papers, or documents or any thereof pertaining to such business shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for a term not exceeding 6 months or by both such fine and imprisonment. If the director, after hearing such evidence and after such examination of the books, papers, documents, and records of such person, shall find and determine that such statement and return are erroneous or false in any material matter, the director shall change and correct the same so as to show the true gross value of product and shall reassess the amount of the license tax due from such person and may add thereto a penalty of not exceeding 50% and shall thereupon immediately mail to such person a written notice of the corrections and changes made in such statement and return and the amount of the license tax and penalty due and payable.

(2) The department shall collect such license tax with penalty added, and if the same has become delinquent, it shall also collect interest thereon from the date of delinquency until paid, at the rate of 1% per month or fraction thereof. In order to verify such statement and return, the department may require any person engaged in the business of smelting, milling, reduction, or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Montana to appear before the director of revenue and testify concerning the gross mineral content of any such ore or at the request of said director to furnish sworn statements showing the gross yield of such ores, mineral products, or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement, during the period covered by such statement, without any deductions whatsoever for smelting, milling, reduction, or treatment of such ores or mineral product.

(3) The books, records, papers, and documents of such person engaged in the business of smelting, milling, reduction, or treatment in any manner of ores extracted or produced by any mine or mining property in the state shall be open to inspection and examination by the director of revenue or his employees at any time or place that the director may designate.

(4) If any person required by this part to make or file any statement or to verify, under oath, any statement shall make such statement false in any

material respect or shall verify, under oath, any statement false in any respect or shall fail, neglect, or refuse to file any statement required by said department or shall refuse to appear before the director of revenue to testify concerning the gross mineral content of any such ore or shall refuse to allow the director or his employees at any time or place to inspect or examine the books, records, papers, and documents of such person engaged in the business of smelting, milling, reduction, or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding $1,000 or by imprisonment in the county jail for not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 9, Initiative No. 28, 1925; re-en. Sec. 2344.9, R.C.M. 1935; amd. Sec. 72, Ch. 405, L. 1973; amd. Sec. 7, Ch. 126, L. 1975; R.C.M. 1947, 84-2009.

Cross-References

Deficiency assessment procedure, 15-37-114.

15-37-110. Review of determination of gross value of product or amount of tax. Every person whose license tax has been determined and assessed by the department of revenue under any of the provisions of this part who feels aggrieved by the determination and assessment of the department as to the amount of gross value of product or as to the amount of the license tax may seek review pursuant to 15-1-211.

History: En. Sec. 10, Initiative No. 28, 1925; re-en. Sec. 2344.10, R.C.M. 1935; amd. Sec. 73, Ch. 405, L. 1973; amd. Sec. 8, Ch. 126, L. 1975; amd. Sec. 7, Ch. 156, L. 1977; R.C.M. 1947, 84-2010; amd. Sec. 16, Ch. 811, L. 1991.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

15-37-111. License tax supplemental. The license taxes herein provided for shall be in addition to all other taxes, licenses, and other fees now required to be paid by persons subject to the provisions of this part.

History: En. Sec. 14, Initiative No. 28, 1925; re-en. Sec. 2344.14, R.C.M. 1935; R.C.M. 1947, 84-2014.

15-37-112. Returns of dissolved corporations. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall, on or before the date of such dissolution or cessation of business, make all statements, reports, and returns required by law to be made with reference to the carrying on of the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals, precious or semiprecious gems or stones are produced and pay the tax due for such period as it carried on such business. The department of revenue may grant a reasonable extension of time for filing returns upon good cause shown therefor.

History: En. Sec. 1, Ch. 11, L. 1941; amd. Sec. 108, Ch. 516, L. 1973; R.C.M. 1947, 84-2016.

15-37-113. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 13, Initiative No. 28, 1925; re-en. Sec. 2344.13, R.C.M. 1935; amd. Sec. 107, Ch. 516, L. 1973; amd. Sec. 11, Ch. 126, L. 1975; R.C.M. 1947, 84-2013.

15-37-114. Deficiency assessment — review — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 17, Ch. 811, L. 1991.

15-37-115. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-37-114 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983.

15-37-116. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend

the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the state resource indemnity trust fund, 15.5% of total collections each year;

(d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:

(A) 33 ⅓% is allocated to the county for planning or economic development activities;

(B) 33 ⅓% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 ⅓% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502.

History: En. Sec. 1, Ch. 619, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 8, Ch. 672, L. 1989; amd. Sec. 2, Ch. 760, L. 1991; amd. Sec. 7, Ch. 15, Sp. L. July 1992; amd. Sec. 8, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 near middle of (1), after "part", substituted "must, in accordance with the provisions of 15-1-501(6), be" for "are"; in (4), in temporary version after "must", inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

15-37-118 through 15-37-125 reserved.

15-37-126. Terminated. Section 39(3), Ch. 15, Sp. L. July 1992.

History: En. Sec. 6, Ch. 15, Sp. L. July 1992.

Part 2

Micaceous Mineral Mines

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-37-201. License tax on micaceous mines. Every person engaged in or carrying on the business of working or operating any mine or mining property in the state from which vermiculite, perlite, kerrite, maconite, or any other micaceous minerals are mined, extracted, or produced must pay to the department of revenue for the exclusive use and benefit of the state a license tax for engaging in and carrying on such business in an amount equal to 5 cents per ton for each and every ton of concentrates mined, extracted, or produced by such person during such year.

History: En. Sec. 2, Ch. 50, L. 1951; amd. Sec. 224, Ch. 516, L. 1973; amd. Sec. 1, Ch. 209, L. 1977; R.C.M. 1947, 84-5902.

15-37-202. Quarterly payment. Such annual license tax as imposed by 15-37-201 shall be paid in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of such license tax due for each such quarter shall be paid to the department of revenue within 30 days after the end of each quarter.

History: En. Sec. 3, Ch. 50, L. 1951; amd. Sec. 225, Ch. 516, L. 1973; R.C.M. 1947, 84-5903.

15-37-203. Records. Every such person shall keep a record in such form as the department of revenue may require of all such products mined or produced by him in this state. Such records shall at all times during the business hours of the day be subject to inspection by the department, its agents or employees.

History: En. Sec. 5, Ch. 50, L. 1951; amd. Sec. 227, Ch. 516, L. 1973; R.C.M . 1947, 84-5905.

15-37-204. Quarterly return. (1) Each and every person must, within 30 days after the end of each quarter, make out on forms prescribed by the department of revenue and deliver to the department a statement showing the total number of tons of concentrates of vermiculite, perlite, kerrite, maconite, or any other micaceous minerals mined or produced by such person during each month of such quarter and during the whole quarter and such other information as the department may require, together with the total amount due to the state as license taxes for such quarter, and must, within such 30 days and at the same time such statement is delivered to the department, pay to the department the amount of the license taxes shown by such statement to be due to the state for the quarter for which such statement is made.

(2) Any person engaged in carrying on such business at more than one place or operating more than one mine in this state may include all thereof in one statement.

(3) The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: En. Sec. 6, Ch. 50, L. 1951; amd. Sec. 228, Ch. 516, L. 1973; amd. Sec. 2, Ch. 209, L. 1977; R.C.M. 1947, 84-5906.

15-37-205. Procedure on failure to file statement. (1) If any person shall fail, neglect, or refuse to file any statement required by 15-37-204 within the time required or shall fail to pay the tax required by this part on or before the date such payment is due, the department of revenue shall immediately after such time has expired proceed to inform itself as best it may regarding the amount produced by such person within this state during such quarter and during each month thereof and shall determine and fix the amount of the license taxes due to the state from such person for such quarter.

(2) The department shall add to the amount of all delinquent micaceous mineral mines license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment. The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-37-204 is provided.

History: En. Sec. 7, Ch. 50, L. 1951; amd. Sec. 229, Ch. 516, L. 1973; amd. Sec. 3, Ch. 209, L. 1977; R.C.M. 1947, 84-5907(1), (2).

15-37-206. Collection — warrant for distraint. (1) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made, a warrant for distraint may be filed.

(2) If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. Sec. 7, Ch. 50, L. 1951; amd. Sec. 229, Ch. 516, L. 1973; amd. Sec. 3, Ch. 209, L. 1977; R.C.M. 1947, 84-5907(3); amd. Sec. 20, Ch. 439, L. 1981.

15-37-207. Disposition of proceeds of tax. All license taxes collected under the provisions of this part shall be deposited to the credit of the general fund of the state.

History: En. Sec. 8, Ch. 50, L. 1951; R.C.M. 1947, 84-5908.

15-37-208. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 4, Ch. 50, L. 1951; amd. Sec. 226, Ch. 516, L. 1973; R.C.M. 1947, 84-5904.

15-37-209. Renumbered 15-37-221 by Code Commissioner, 1983.

15-37-210. Deficiency assessment — review — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 18, Ch. 811, L. 1991.

15-37-211. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-37-210 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983.

15-37-212. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of

the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-37-213 through 15-37-220 reserved.

15-37-221. Penalty for violations. Any violation of any of the provisions of this part shall be deemed a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 50, L. 1951; R.C.M. 1947, 84-5909; MCA 1981, 15-37-209; redes. 15-37-221 by Code Commissioner, 1983.

15-37-222 through 15-37-225 reserved.

15-37-226. Terminated. Section 39(2), Ch. 15, Sp. L. July 1992.

History: En. Sec. 8, Ch. 15, Sp. L. July 1992.

CHAPTER 38

RESOURCE INDEMNITY TRUST TAX

Part 1 — General Provisions

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Part 2 — Resource Indemnity Trust Fund

15-38-201. Creation of resource indemnity trust fund.

15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.
15-38-203. Purpose of fund usage — limitation on future use.

Chapter Cross-References

Resource Indemnity Trust, Art. IX, sec. 2, Mont. Const.

Environmental contingency grant program, Title 75, ch. 1, part 11.

Hard-rock mining impact property tax base sharing, Title 90, ch. 6, part 4.

Part 1

General Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-38-101. Short title. This chapter shall be known and may be cited as "The Montana Resource Indemnity Trust and Ground Water Assessment Act".

History: En. 84-7001 by Sec. 1, Ch. 497, L. 1973; R.C.M. 1947, 84-7001; amd. Sec. 14, Ch. 769, L. 1991.

15-38-102. Legislative policy. It is the policy of the state of Montana to indemnify its citizens for the loss of long-term value resulting from the depletion of its mineral resource base and for environmental damage caused by mineral development. This policy of indemnification is achieved by establishing a permanent resource indemnity trust, as required by Article IX, section 2, of the Montana constitution, by supporting ground water assessment programs from the proceeds of a tax levied on mineral extraction, and by allocating spendable revenues:

(1) to protect and restore the environment from damages resulting from mineral development;

(2) to support a variety of development programs that benefit the economy of the state and the lives of Montana citizens; and

(3) to assess the state's ground water resources.

History: En. 84-7002 by Sec. 2, Ch. 497, L. 1973; R.C.M. 1947, 84-7002; amd. Sec. 11, Ch. 418, L. 1987; amd. Sec. 15, Ch. 769, L. 1991.

15-38-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means department of revenue.

(2) "Gross value of product" means, except as provided in 15-38-125 through 15-38-128, the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Total environment" means air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens.

History: En. 84-7003 by Sec. 3, Ch. 497, L. 1973; amd. Sec. 23, Ch. 52, L. 1977; R.C.M. 1947, 84-7003; amd. Sec. 11, Ch. 531, L. 1989; amd. Sec. 1, Ch. 520, L. 1991; amd. Sec. 12, Ch. 695, L. 1991; amd. Sec. 11, Ch. 506, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 506 in definition of gross value of product expanded reference to include 15-38-128. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

15-38-104. Tax on mineral production. (1) Except as provided in subsections (2) through (4), the annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing a mineral is $25, plus an additional amount computed on the gross value of product that was derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing:

(a) talc is $25 plus an additional amount computed on the gross value of product for talc derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 4%; and

(b) coal is $25 plus an additional amount computed on the gross value of product for coal produced in Montana during the calendar year immediately preceding at the rate of 0.4%.

(3) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing vermiculite is $25 plus an additional amount computed on the gross value of product for vermiculite derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 2%.

(4) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing limestone for the production of quicklime is $25 plus an additional amount computed on the gross value of product for limestone derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 10%.

History: En. 84-7006 by Sec. 6, Ch. 497, L. 1973; amd. Sec. 1, Ch. 495, L. 1977; R.C.M. 1947, 84-7006; amd. Sec. 12, Ch. 531, L. 1989; amd. Sec. 2, Ch. 520, L. 1991; amd. Sec. 13, Ch. 695, L. 1991; amd. Sec. 12, Ch. 506, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 506 near beginning of (1), after "(2)", expanded reference to include subsection (4); and inserted (4) setting annual tax of $25 on mining, extracting, or producing limestone for quicklime. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

15-38-105. Report of gross yield from mines. A person who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or tailings, or other place or source shall file an annual statement of gross yield of the mineral from each mine owned or worked by that person during the calendar year. This statement must be in the form prescribed by the department and shall be signed by the person or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership, if any. Metal producers shall deliver the statement to the department on or before March 31 following the end of the calendar year. Mineral producers, including oil and gas producers, shall deliver the statement to the department on or before the 60th day following the end of the calendar year. The statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine;

(2) the description and location of the mine;

(3) the quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas, or other commercially valuable constituents of the ores or mineral products or deposits yielded to the person engaged in mining measured by standard units of measurement;

(5) the gross yield or value in dollars and cents.

History: En. 84-7005 by Sec. 5, Ch. 497, L. 1973; R.C.M. 1947, 84-7005; amd. Sec. 3, Ch. 334, L. 1981; amd. Sec. 1, Ch. 226, L. 1983; amd. Sec. 6, Ch. 128, L. 1989.

15-38-106. *(Temporary)* **Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501(6), deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

(a) 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905;

(b) 15% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and

(c) 15% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104.

(3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit

against tax liability for subsequent years or refunded if requested by the taxpayer. *(Terminates June 30, 1995—sec. 37, Ch. 478, L. 1993.)*

15-38-106. *(Effective July 1, 1995)* **Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501(6), deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

(a) 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905;

(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and

(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104.

(3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer.

History: En. 84-7007, 84-7008 by Secs. 7, 8, Ch. 497, L. 1973; R.C.M. 1947, 84-7007, 84-7008; amd. Sec. 1, Ch. 585, L. 1979; amd. Sec. 2, Ch. 226, L. 1983; amd. Sec. 4, Ch. 281, L. 1983; amd. Sec. 7, Ch. 128, L. 1989; amd. Sec. 16, Ch. 769, L. 1991; amd. Sec. 9, Ch. 455, L. 1993; amd. Secs. 1, 2, Ch. 478, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 455 near beginning of (2), after "shall", inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

(Temporary version) Chapter 478 inserted (2)(b) and (2)(c) requiring 15% of proceeds to be deposited in renewable resource grant and loan program state special revenue account established by 85-1-604 and requiring 15% of proceeds to be deposited in reclamation and development grants account established by 90-2-1104; and made minor changes in style. Amendment effective July 1, 1993, and terminates June 30, 1995.

(Version effective July 1, 1995) Chapter 478 inserted (2)(b) and (2)(c) requiring 10% of proceeds to be deposited in renewable resource grant and loan program state special revenue account established by 85-1-604 and requiring 30% of proceeds to be deposited in reclamation and development grants account established by 90-2-1104; and made minor changes in style. Amendment effective July 1, 1995.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Cross-References

Deficiency assessment procedure, 15-38-110.

Creation of trust fund, 15-38-201.

15-38-107. Procedure in case of failure to file statement. (1) If any person fails, refuses, or neglects to make and file a statement and return it within the time prescribed, the department shall immediately after such time has expired determine, as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the gross yield of the mineral of such person from such business during the calendar year immediately preceding the year in which the statement is to be filed and shall fix the amount of the tax due to the state from such person for such calendar year and shall add to the amount of such tax a penalty of $25 or 10%, whichever is greater.

(2) If any person fails, refuses, or neglects to pay the tax when due, the department shall immediately determine, as nearly as may be possible from any information which the department may be able to obtain, the total gross value of product of the person from the business during the year for which the tax is due and shall fix the amount of tax due to the state and shall add to the amount a penalty of 10% plus interest at the rate of 1% a month or fraction thereof computed on the total amount of tax and penalty. Interest shall be computed from the date the tax was due to the date of payment.

(3) The department shall mail to the person failing to file an annual statement or pay any tax a letter setting forth the amount of tax, penalty, and interest due. The letter shall advise that if payment is not received, a warrant for distraint may be filed.

(4) Penalties may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-38-105 or the failure to pay the tax required by 15-38-106 is provided to the department.

History: En. 84-7012 by Sec. 12, Ch. 497, L. 1973; amd. Sec. 1, Ch. 301, L. 1975; amd. Sec. 11, Ch. 156, L. 1977; R.C.M. 1947, 84-7012(1) thru (3); amd. Sec. 21, Ch. 439, L. 1981; amd. Sec. 3, Ch. 226, L. 1983; amd. Sec. 8, Ch. 128, L. 1989.

Cross-References

Warrant for distraint, Title 15, ch. 1, part 7.

15-38-108. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-7012 by Sec. 12, Ch. 497, L. 1973; amd. Sec. 1, Ch. 301, L. 1975; amd. Sec. 11, Ch. 156, L. 1977; R.C.M. 1947, 84-7012(4); amd. Sec. 22, Ch. 439, L. 1981.

15-38-109. Restricted access to records. The information furnished by the producer to the department for the purpose of this chapter must be treated as provided in 15-31-511.

History: En. Sec. 13, Ch. 497, L. 1973; R.C.M. 1947, 84-7013; amd. Sec. 3, Ch. 135, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 135 at end substituted "15-31-511" for "15-31-507"; and made minor changes in style.

15-38-110. Deficiency assessment — review — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: **En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 19, Ch. 811, L. 1991.**

15-38-111. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-38-110 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 2, Ch. 14, L. 1983.**

15-38-112. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment,

the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-38-113. Exemption from resource indemnity and ground water assessment tax. A person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37, part 1, is exempt from the resource indemnity and ground water assessment tax.

History: En. Sec. 11, Ch. 672, L. 1989; amd. Sec. 17, Ch. 769, L. 1991.

15-38-114 through 15-38-120 reserved.

15-38-121. Certain royalties exempt. Exempt from taxation are royalties received by:

(1) an Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a-396g (1983));

(2) the United States as trustee for individual Indians; and

(3) the United States, the state of Montana, or a county or municipal government.

History: En. Sec. 1, Ch. 536, L. 1989; amd. Sec. 1, Ch. 92, L. 1991.

Cross-References

Oil and gas net proceeds tax — tribal royalties exempt, 15-23-631.

Oil and gas severance tax — tribal royalties exempt, 15-36-120.

15-38-122 through 15-38-124 reserved.

15-38-125. Gross value of product for coal. As used in this part when referring to coal, "gross value of product" is determined by multiplying the contract sales price, as defined in 15-35-102, by the tonnage produced.

History: En. Sec. 3, Ch. 520, L. 1991.

15-38-126. Gross value of product for talc. As used in this part, when referring to talc, "gross value of product" is the gross yield or value of talc as determined in 15-23-515(2).

History: En. Sec. 2, Ch. 531, L. 1989.

15-38-127. Gross value of product for vermiculite. As used in this part, when referring to vermiculite, "gross value of product" is the gross yield or value of vermiculite as determined in 15-23-516(2).

History: En. Sec. 2, Ch. 695, L. 1991.

15-38-128. Gross value of product for limestone. As used in this part, when referring to limestone, "gross value of product" is the gross yield or value as determined in 15-23-517(2).

History: En. Sec. 2, Ch. 506, L. 1993.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

15-38-129 through 15-38-135 reserved.

15-38-136. *(Temporary)* **Surtax.** (1) Each person required to pay the resource indemnity trust tax under this part shall pay, in addition to the tax liability computed as required in 15-38-104, a surtax of 7% of the tax liability.

(2) The additional tax must, in accordance with the provisions of 15-1-501(6), be deposited to the credit of the state general fund.

History: En. Sec. 9, Ch. 15, Sp. L. July 1992; amd. Sec. 10, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 in (2), after "must", inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Retroactive Applicability — Termination: Section 39(3), Ch. 15, Sp. L. July 1992, provided that this section applies to production occurring after December 31, 1991, and before January 1, 1993. This section terminates upon receipt of taxes on production occurring prior to January 1, 1993.

Part 2

Resource Indemnity Trust Fund

15-38-201. Creation of resource indemnity trust fund. For the purpose of carrying out this chapter, there is a resource indemnity trust fund in the nonexpendable trust fund type. The resource indemnity fund shall be credited with all moneys received as herein provided.

History: En. 84-7004 by Sec. 4, Ch. 497, L. 1973; R.C.M. 1947, 84-7004; amd. Sec. 5, Ch. 281, L. 1983.

15-38-202. *(Temporary)* **Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(iii) beginning in fiscal year 1995, $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at northern Montana college to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;

(iv) $1,025,000 to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(v) $2,200,000 to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

(vi) beginning in fiscal year 1994, $250,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(b) The remainder of the interest income is allocated as follows:

(i) Thirty-eight percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Fifteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty-one and one-half percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Five and one-half percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.

15-38-202. *(Effective July 1, 1995)* **Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(iii) beginning in fiscal year 1995, $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at northern Montana college to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;

(iv) beginning in fiscal year 1996, $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(v) beginning in fiscal year 1996, $3 million to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

(vi) beginning in fiscal year 1996, $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(b) The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.

History: En. 84-7009 by Sec. 9, Ch. 497, L. 1973; R.C.M. 1947, 84-7009; amd. Sec. 44, Ch. 505, L. 1981; amd. Sec. 6, Ch. 241, L. 1983; amd. Sec. 6, Ch. 281, L. 1983; amd. Sec. 1, Ch. 716, L. 1985; amd. Sec. 1, Ch. 408, L. 1987; amd. Secs. 12, 18, Ch. 418, L. 1987; amd. Secs. 1, 5, Ch. 555, L. 1987; amd. Sec. 1, Ch. 530, L. 1989; amd. Sec. 12, Ch. 672, L. 1989; amd. Secs. 3, 4, Ch. 478, L. 1993; amd. Sec. 12, Ch. 613, L. 1993.

Compiler's Comments

1993 Amendments: (Temporary version) Chapter 478 at beginning of (2)(a)(ii) deleted "beginning in fiscal year 1992"; inserted (2)(a)(iv), (2)(a)(v), and (2)(a)(vi) requiring $1,025,000 to be deposited into renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants, $2,200,000 to be deposited into reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants, and beginning fiscal year 1994, $250,000 to be deposited into water storage state special revenue account, created by 85-1-631; at beginning of (2)(b)(i) substituted "Thirty-eight percent of the interest income" for "Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30% of the interest income" and near middle, before "state", substituted "renewable resource grant and loan program" for "water development"; at beginning of (2)(b)(ii) substituted "Fifteen percent" for "Beginning in fiscal year 1988, 12%"; deleted former (2)(b)(iii) that read: "Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2"; in (2)(b)(iii) substituted "Forty-one and one-half percent" for "Beginning in fiscal year 1990, 46%"; at beginning of (2)(b)(iv) substituted "Five and one-half percent" for "Beginning in fiscal year 1990, 4%"; and made minor changes in style. Amendment effective July 1, 1993.

(Version effective July 1, 1995) Chapter 478 at beginning of (2)(a)(ii) deleted "beginning in fiscal year 1992"; inserted (2)(a)(iv), (2)(a)(v), and (2)(a)(vi) requiring, beginning in fiscal year 1996, $2 million to be deposited into renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants, beginning in fiscal year 1996, $3 million to be deposited into reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants, and beginning fiscal year 1996, $500,000 to be deposited into water storage state special revenue account, created by 85-1-631; at beginning of (2)(b)(i) substituted "Thirty-six percent" for "Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30%" and near middle, before "state", substituted "renewable resource grant and loan program" for "water development"; at beginning of (2)(b)(ii) substituted "Eighteen percent" for "Beginning in fiscal year 1988, 12%"; deleted former (2)(b)(iii) that read: "Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2"; in (2)(b)(iii) substituted "Forty percent" for "Beginning in fiscal year 1990, 46%"; at beginning of (2)(b)(iv) substituted "Six percent" for "Beginning in fiscal year 1990, 4%"; and made minor changes in style. Amendment effective July 1, 1995.

(Both versions) Chapter 613 inserted (2)(a)(iii) statutorily appropriating money to support environmental science-water quality instructional programs; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Resource Indemnity Trust, Art. IX, sec. 2, Mont. Const.

Board of Investments, 2-15-1808.

Payment into grant program special revenue account, 75-1-1102.

Use of funds to reclaim abandoned wells or holes, 82-10-402.

15-38-203. Purpose of fund usage — limitation on future use. (1) Any funds made available under this chapter shall be used and expended to improve the total environment and rectify damage thereto.

(2) It is the intent of the legislature that future appropriations from the resource indemnity trust interest account not be made to fund general operating expenses of state agencies.

History: En. 84-7010 by Sec. 10, Ch. 497, L. 1973; R.C.M. 1947, 84-7010; (2)En. Sec. 7, HB 922, L. 1985.

CHAPTERS 39 THROUGH 43

RESERVED

CHAPTER 44

FOREST LANDS TAX

Part 1 — General Provisions

15-44-101. Short title.
15-44-102. Definitions.

15-44-103. Legislative intent — value of forest lands — valuation zones.
15-44-104. Reduction in valuation on forest lands for trees destroyed by natural disaster.
15-44-105. Administration — rules.

Part 1

General Provisions

15-44-101. Short title. This part may be cited as the "Forest Lands Tax Act".

History: En. Sec. 1, Ch. 783, L. 1991.

15-44-102. Definitions. For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Culmination of mean annual increment" means the point of optimum net wood production on an acre of forest land.

(2) "Cultivated Christmas trees" means Christmas trees that are grown on land prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled for the exclusive purpose of raising Christmas trees.

(3) "Department" means the department of revenue.

(4) "Forest" means forest land and the timber on the land.

(5) "Forest land" means contiguous land of 15 acres or more in one ownership that is capable of producing timber that can be harvested in commercial quantity and is producing timber unless the trees have been removed by man through harvest, including clearcuts, or by natural disaster, including but not limited to fire. Forest land includes land:

(a) that has not been converted to another use; or

(b) that has a dedicated use that is evidenced by a statement of intent by the owner for the eventual harvest of timber.

(6) "Forest productivity value" means the value of forest land for assessment purposes, which value is determined only on the basis of its ability to produce timber, other forest products, and associated agricultural products through an income approach provided for in 15-44-103.

(7) "Harvest" means an activity related to the cutting or removal of timber for use or sale as a forest product.

(8) "Landowner" means an individual, corporation, association, company, firm, joint venture, syndicate, or trust.

(9) "Mean annual net wood production" means the average net usable volume of wood 1 acre of forest land will grow in 1 year under average current and actual forest conditions and under current and reasonable management practices for each forest valuation zone established under 15-44-103.

(10) "Stumpage value" means the amount that timber would sell for under an arm's-length transaction made in the ordinary course of business, expressed in terms of dollars per unit of measure.

(11) "Timber" means all wood growth on privately owned land, mature or immature, alive or dead, standing or down, that is capable of furnishing raw material used in the manufacture of lumber or other forest products. The term does not include cultivated Christmas trees.

History: En. Sec. 2, Ch. 783, L. 1991.

15-44-103. Legislative intent — value of forest lands — valuation zones. (1) In order to encourage landowners of private forest lands to retain and improve their holdings of forest lands, to promote better forest practices, and to encourage the investment of capital in reforestation, forest lands must be classified and assessed under the provisions of this section.

(2) The forest productivity value of forest land must be determined by:

(a) capitalizing the value of the mean annual net wood production at the culmination of mean annual increment plus other agriculture-related income, if any; less

(b) annualized expenses, including but not limited to the establishment, protection, maintenance, improvement, and management of the crop over the rotation period.

(3) To determine the forest productivity value of forest lands, the department shall:

(a) divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone; and

(b) establish a uniform system of forest land classification that takes into consideration the productive capacity of the site to grow forest products and furnish other associated agricultural uses.

(4) In computing the forest land valuation schedules for each forest valuation zone to take effect on January 1, 1994, the department shall determine the productive capacity value of all forest lands in each forest valuation zone using the formula $V = I/R$, where:

(a) V is the per-acre forest productivity value of the forest land;

(b) I is the per-acre net income of forest lands in each valuation zone and is determined by the department using the formula $I = (M \times SV) +$

(i) I is the per-acre net income;

(ii) M is the mean annual net wood production;

(iii) SV is the stumpage value;

(iv) AI is the per-acre agriculture-related income; and

(v) C is the per-unit cost of the forest product and agricultural product produced, if any; and

(c) R is the capitalization rate determined by the department as provided in subsection (6).

(5) Net income must:

(a) be calculated for each year of a base period, which is the most recent 5-year period for which data is available;

(b) be based on a rolling average of stumpage value of timber harvested within the forest valuation zone and on the associated production cost data for the base period from sources considered appropriate by the department; and

(c) include agriculture-related net income for the same time period as the period used to determine average stumpage values.

(6) The capitalization rate must be calculated for each year of the base period and is the annual average interest rate on agricultural loans as reported by the federal land bank association of Spokane, Washington, plus the effective tax rate.

(7) The effective tax rate must be calculated for each year of the base period by dividing the total estimated tax due on forest lands subject to the provisions of this section by the total forest value of those lands.

(8) For the purposes of this section, if forest service sales are used in the determination of stumpage values, the department shall take into account purchaser road credits.

(9) In determining the forest productivity value of forest lands and in computing the forest land valuation schedules, the department shall use information and data provided by the university of Montana.

History: En. Sec. 3, Ch. 783, L. 1991.

15-44-104. Reduction in valuation on forest lands for trees destroyed by natural disaster. (1) Forest lands upon which, at any time after December 31, 1993, trees are destroyed by fire, disease, insect infestation, or other natural disaster so that the lands affected will not meet minimum stocking requirements are eligible for a reduction in value for the first 20 tax years following the loss.

(2) If a landowner shows to the department's satisfaction that the landowner's forest lands have been destroyed as provided in subsection (1), the department shall reduce the value of the forest land by 50% of the original forest productivity value per year.

History: En. Sec. 4, Ch. 783, L. 1991.

15-44-105. Administration — rules. The department shall:

(1) administer and enforce the provisions of this part;

(2) arrange for the preparation and distribution of forms and information necessary to administer the provisions of this part; and

(3) promulgate rules necessary to administer and enforce the provisions of this part.

History: En. Sec. 5, Ch. 783, L. 1991.

CHAPTERS 45 THROUGH 49

RESERVED

CHAPTER 50

PUBLIC CONTRACTOR'S FEES AND TAX

Part 1 — General Provisions

15-50-101. Definition.
15-50-102. Renumbered 37-71-102 by Code Commissioner, 1983.
15-50-103. Renumbered 37-71-103 by Code Commissioner, 1983.
15-50-104. Renumbered 37-71-104 by Code Commissioner, 1983.
15-50-105. Renumbered 37-71-105 by Code Commissioner, 1983.

Part 2 — Tax on Contractors

15-50-201. Renumbered 37-71-201 by Code Commissioner, 1983.
15-50-202. Renumbered 37-71-202 by Code Commissioner, 1983.
15-50-203. Renumbered 37-71-203 by Code Commissioner, 1983.

15-50-204. Renumbered 37-71-204 by Code Commissioner, 1983.
15-50-205. Additional license tax imposed.
15-50-206. Withholding license fee from payments — refunds.
15-50-207. Credit against other taxes — credit for personal property taxes and certain fees.
15-50-208 through 15-50-210 reserved.
15-50-211. Renumbered 37-71-211 by Code Commissioner, 1983.
15-50-212. Renumbered 37-71-212 by Code Commissioner, 1983.
15-50-213. Renumbered 37-71-213 by Code Commissioner, 1983.

Part 3 — Contractor's Tax Return

15-50-301. Rule for contractor's return — penalty.
15-50-302. Renumbered 37-71-301 by Code Commissioner, 1983.
15-50-303. Renumbered 37-71-302 by Code Commissioner, 1983, and 15-50-301(2) by Code Commissioner, 1985.
15-50-304. Statute of limitations.

Part 1
General Provisions

15-50-101. Definition. In this chapter, for the purposes hereof, "gross receipts" means all receipts from sources within the state, whether in the form of money, credits, or other valuable consideration, received from, engaging in, or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense whatsoever. However, gross receipts shall not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, or payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person.

History: En. Sec. 1, Ch. 195, L. 1967; amd. Sec. 12, Ch. 52, L. 1977; R.C.M. 1947, 84-3501(3); MCA 1981, 15-50-101; redes. 37-71-101 by Code Commissioner, 1983; Sec. 37-71-101(3), MCA 1983; redes. 15-50-101 by Code Commissioner, 1985.

15-50-102. Renumbered 37-71-102 by Code Commissioner, 1983.

15-50-103. Renumbered 37-71-103 by Code Commissioner, 1983.

15-50-104. Renumbered 37-71-104 by Code Commissioner, 1983.

15-50-105. Renumbered 37-71-105 by Code Commissioner, 1983.

Part 2
Tax on Contractors

15-50-201. Renumbered 37-71-201 by Code Commissioner, 1983.

15-50-202. Renumbered 37-71-202 by Code Commissioner, 1983.

15-50-203. Renumbered 37-71-203 by Code Commissioner, 1983.

15-50-204. Renumbered 37-71-204 by Code Commissioner, 1983.

15-50-205. Additional license tax imposed. (1) In addition to the fees enumerated in 37-71-204, each public contractor, unless he constructs or works on a federal research facility, shall pay to the department of revenue an additional license fee in a sum equal to 1% of the gross receipts, as defined in 15-50-101, from public contracts during the income year for which the license is issued.

(2) The additional license fee shall be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as specified in 37-71-101(3).

History: En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(part); amd. Sec. 7, Ch. 240, L. 1983; amd. Sec. 1, Ch. 741, L. 1985.

15-50-206. Withholding license fee from payments — refunds. (1) The prime contractor shall withhold the additional 1% license fee from payments to his subcontractors and inform the department of revenue on prescribed forms of the amount of the additional 1% license fee in his account to be allocated and transferred to the subcontractor. The notification to transfer portions of the additional 1% license fee must be filed within 30 days after each payment is made to subcontractors. If any prime contractor fails to file the required allocation and transfer report at the time required by or under the provisions of this chapter, a penalty computed at the rate of 10% of the additional 1% license fee withheld from subcontractors shall be due from the prime contractor.

(2) The state, county, city, or any agency or department thereof, as described in 37-71-101(3) for whom the contractor is performing public work shall withhold, in addition to other amounts withheld as provided by law, 1% of all payments due the contractor and shall transmit such moneys to the department of revenue. In the event that the 1% of gross receipts, as defined in 15-50-101, is not withheld as provided, the contractor shall make payment of these amounts to the department within 30 days after the date on which the contractor receives each increment of payment for work performed by the contractor.

(3) Any overpayment of the 1% of gross receipts, as defined in 15-50-101, withheld or paid by any contractor hereunder shall be refunded by the department of revenue at the end of the income year upon written application therefor.

History: (1)En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; Sec. 84-3505, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 195, L. 1967; amd. Sec. 144, Ch. 516, L. 1973; Sec. 84-3513, R.C.M. 1947; R.C.M. 1947, 84-3505(part), 84-3513; amd. Sec. 8, Ch. 240, L. 1983.

15-50-207. Credit against other taxes — credit for personal property taxes and certain fees. (1) The additional license fees withheld or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(2) Personal property taxes paid in Montana on any personal property of the contractor which is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the personal property tax credit against the license fees herein required shall not be considered as

license fees paid for the purpose of such income tax or corporation license tax credit.

History: En. Sec. 4, Ch. 195, L. 1967; R.C.M. 1947, 84-3514; amd. Sec. 22, Ch. 614, L. 1981; amd. Sec. 12, Ch. 516, L. 1985; amd. Sec. 14, Ch. 611, L. 1987.

15-50-208 through 15-50-210 reserved.

15-50-211. Renumbered 37-71-211 by Code Commissioner, 1983.

15-50-212. Renumbered 37-71-212 by Code Commissioner, 1983.

15-50-213. Renumbered 37-71-213 by Code Commissioner, 1983.

Part 3

Contractor's Tax Return

15-50-301. Rule for contractor's return — penalty. (1) The department of revenue shall establish rules requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year.

(2) A person failing to file a contractor's license return as provided and required by the department of revenue, upon conviction, shall be fined not less than $1,000 or more than $10,000.

History: (1)En. Sec. 5, Ch. 195, L. 1967; amd. Sec. 145, Ch. 516, L. 1973; R.C.M. 1947, 84-3515(part); (2)En. Sec. 6, Ch. 195, L. 1967; amd. Sec. 146, Ch. 516, L. 1973; R.C.M. 1947, 84-3516; Sec. 37-71-302(2), MCA 1983; redes. 15-50-301(2) by Code Commissioner, 1985.

15-50-302. Renumbered 37-71-301 by Code Commissioner, 1983.

15-50-303. Renumbered 37-71-302 by Code Commissioner, 1983, and 15-50-301(2) by Code Commissioner, 1985.

15-50-304. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a public contractor's gross receipts tax return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered filed on the last day. If the taxpayer, before the expiration of the 5-year period, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue determines the existence of the overpayment and approves the refund or credit thereof. If the taxpayer agrees in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If the return is required to be filed and the taxpayer files a

fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery by the department of the fraud.

History: En. Sec. 1, Ch. 437, L. 1985.

CHAPTER 51

ELECTRIC ENERGY PRODUCERS' LICENSE TAX

Part 1 — General Provisions

15-51-101. Rate of tax — electrical energy producers.
15-51-102. Payment of tax — not to be set out on customers' bills.
15-51-103. Disposition of revenue — interest on delinquency.
15-51-104. Inspection of books of producer.
15-51-105. Repealed.
15-51-106. Future producers to comply.
15-51-107 and 15-51-108 reserved.
15-51-109. Deficiency assessment — review — interest.
15-51-110. Credit for overpayment — interest on overpayment.
15-51-111. Procedure to compute tax in absence of statement.
15-51-112. Warrant for distraint.
15-51-113. Penalty for violation — enforcement.
15-51-114. Statute of limitations.
15-51-115 through 15-51-125 reserved.
15-51-126. Terminated.

Part 1

General Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

Tax on companies regulated by the Public Service Commission to fund Consumer Counsel, 69-1-223.

15-51-101. Rate of tax — electrical energy producers. In addition to the license tax now provided by law, each person or other organization now engaged in the generation, manufacture, or production of electricity and electrical energy in the state of Montana, either through waterpower or by any other means, for barter, sale, or exchange (and hereinafter referred to as the "producer") shall on or before the 30th day after each calendar quarter, quarterly periods ending March 31, June 30, September 30, and December 31, render a statement to the department of revenue showing the gross amount, except for actual and necessary plant use, required to produce the energy of electricity and electrical energy produced, manufactured, or generated during the preceding calendar quarter without any deduction and shall pay a license tax thereon in the sum of $.0002 per kilowatt hour on all such electricity and electrical energy generated, manufactured, or produced, measured at the place of production and as shown on the statement required in the manner and within the time hereinafter provided.

History: En. Sec. 1, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.1, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957; amd. Sec. 1, Ch. 5, Ex. L. 1969; amd. Sec. 1,

Ch. 391, L. 1971; amd. Sec. 69, Ch. 516, L. 1973; amd. Sec. 4, Ch. 52, L. 1977; amd. Sec. 1, Ch. 401, L. 1977; R.C.M. 1947, 84-1601.

Cross-References

Credit for loans by certain utilities for energy-saving purposes, 15-32-107.

Exemption of rural electric cooperatives, 35-18-503.

15-51-102. Payment of tax — not to be set out on customers' bills. The license tax shall be remitted with the statement and paid on or before the 30th day of the month after each calendar quarter. No bill, statement, or account rendered or given any customer by any organization affected by the provisions of this chapter shall set out or contain as a separate item any amount on account or by reason of the license tax imposed by this chapter.

History: En. Sec. 2, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.2, R.C.M. 1935; amd. Sec. 2, Ch. 5, Ex. L. 1969; amd. Sec. 2, Ch. 401, L. 1977; R.C.M. 1947, 84-1602.

15-51-103. Disposition of revenue — interest on delinquency. The department of revenue shall, in accordance with the provisions of 15-1-501(6), promptly remit the collected taxes to the state treasurer. Taxes not paid on the due date are delinquent, and a penalty of 10% plus interest at the rate of 1% per month or fraction of a month computed on the total of tax and penalty must be charged.

History: En. Sec. 3, Ch. 51, Ex. L. 1933; amd. Sec. 20(F), Ch. 109, L. 1935; re-en. Sec. 2343.3, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 6, Ch. 14, L. 1941; amd. Sec. 70, Ch. 516, L. 1973; amd. Sec. 3, Ch. 401, L. 1977; R.C.M. 1947, 84-1603; amd. Sec. 11, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 near beginning, after "shall", substituted "in accordance with the provisions of 15-1-501(6)" for "receipt therefor and" and after "promptly" substituted "remit the collected taxes" for "turn the same over"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Cross-References

Disposition of tax proceeds, 15-1-501.

15-51-104. Inspection of books of producer. The books and records of such producer shall be subject to inspection by the department of revenue, its agents or employees, during reasonable hours.

History: En. Sec. 5, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.5, R.C.M. 1935; amd. Sec. 72, Ch. 516, L. 1973; amd. Sec. 4, Ch. 401, L. 1977; R.C.M. 1947, 84-1605.

15-51-105. Repealed. Sec. 35, Ch. 581, L. 1979.

History: En. Sec. 8, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.8, R.C.M. 1935; amd. Sec. 74, Ch. 516, L. 1973; amd. Sec. 6, Ch. 126, L. 1977; R.C.M. 1947, 84-1608.

15-51-106. Future producers to comply. Any producer of electricity or electrical energy referred to in 15-51-101 who shall hereafter engage in the generation, production, or manufacture of electricity or electrical energy shall immediately upon purchasing or acquiring the plant or installing equipment therefor comply with the requirements of this chapter.

History: En. Sec. 7, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 20, L. 1935; re-en. Sec. 2343.7, R.C.M. 1935; R.C.M. 1947, 84-1607.

15-51-107 and 15-51-108 reserved.

15-51-109. Deficiency assessment — review — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 20, Ch. 811, L. 1991.

15-51-110. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-51-109 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983.

15-51-111. Procedure to compute tax in absence of statement. If any person fails, neglects, or refuses to file any statement required by 15-51-101 within the time therein required, the department of revenue shall, after such time has expired, proceed to inform itself as best it may regarding the number of KWH produced by such person in this state during such quarter and compute the amount of taxes due to the state from such person for such quarter and add the penalty and interest as required by 15-51-103. The department shall mail to the person required to file a quarterly report and pay such tax a letter setting forth the amount of tax, penalty, and interest due, and the letter must further contain a statement that if payment is not made, a warrant for distraint may be filed. The 10% penalty may be waived by the department if reasonable cause for failure and neglect to file the statement required by 15-51-101 is provided to the department.

History: En. 84-1610 by Sec. 5, Ch. 401, L. 1977; R.C.M. 1947, 84-1610; amd. Sec. 28, Ch. 581, L. 1979; amd. Sec. 23, Ch. 439, L. 1981.

15-51-112. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-1611 by Sec. 6, Ch. 401, L. 1977; R.C.M. 1947, 84-1611; amd. Sec. 24, Ch. 439, L. 1981.

15-51-113. Penalty for violation — enforcement. Any producer referred to in 15-51-101 who shall violate any of the provisions of this chapter or who shall fail to pay the license tax herein provided for or any part thereof when due shall be liable for three times the amount of the unpaid or delinquent tax in a civil action instituted for that purpose in a court of competent jurisdiction in the name of the state of Montana, and in such suit, upon application of the state, an injunction may be issued, without requiring any bond, restraining the defendant from continuing to produce electricity or electrical energy so long as the tax due hereunder from said defendant remains delinquent.

History: En. Sec. 9, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.9, R.C.M. 1935; R.C.M. 1947, 84-1609.

Cross-References

Execution of judgment, Title 25, ch. 13.

15-51-114. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-51-115 through 15-51-125 reserved.

15-51-126. Terminated. Section 39(4), Ch. 15, Sp. L. July 1992.

History: En. Sec. 10, Ch. 15, Sp. L. July 1992.

CHAPTER 52

COLLECTION OF TRANSPORTATION AND COMMUNICATIONS LICENSE TAXES

(Repealed. Sec. 22, Ch. 294, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-52-101 through 15-52-103. En. 84-7701, 84-7702, 84-7705 by Secs. 1, 2, 3, Ch. 36, L. 1977; R.C.M. 1947, 84-7701, 84-7702, 84-7705.

CHAPTER 53

TELEPHONE COMPANY LICENSE TAX

Part 1 — General Provisions

15-53-101. Definitions — rate of license tax on telephone companies.
15-53-102. Statement required of telephone companies.
15-53-103. Taxpayer records.
15-53-104. Department rules.
15-53-105. Deficiency assessment — review — interest — penalty.
15-53-106. Credit for overpayment — interest on overpayment.
15-53-107 through 15-53-110 reserved.
15-53-111. Penalty and interest for delinquency — waiver.
15-53-112. Estimation of tax upon failure to file statement or pay tax — notice.
15-53-113. Warrant for distraint.
15-53-114. Disposal of license taxes.
15-53-115. Statute of limitations.
15-53-116 through 15-53-125 reserved.
15-53-126. Terminated.

Chapter Cross-References

Disposition of tax proceeds, 15-1-501.

Tax on companies regulated by the Public Service Commission to fund Consumer Counsel, 69-1-223.

Part 1
General Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-53-101. Definitions — rate of license tax on telephone companies. (1) As used in this section:

(a) "carrier access service" means the service a local exchange company, as defined in 53-19-302, provides to an interexchange carrier for the origination or termination of telecommunications; and

(b) "telephone business" means the access and transport, for hire, of two-way communications from point of access to point of termination, both of which are within Montana.

(2) A license tax of 1.8% is imposed upon the gross revenue in excess of $250 each quarter received by a person in Montana from telephone business in Montana. As used in this section, "gross revenue" does not include:

(a) carrier access service revenue;

(b) revenue from the sale of telephone services to another telephone service provider who uses the services to provide telephone service to the ultimate retail consumer who originates or terminates the transmission;

(c) revenue from the sale, lease, repair, installation, or maintenance of equipment or from the provision of nontransmission-related services or activities; or

(d) customer access line charges assessed under federal communications commission orders or rules.

(3) A bill or statement may itemize the tax imposed by subsection (2).

(4) The tax imposed by subsection (2) is due in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 in each year.

History: En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957; amd. Sec. 1, Ch. 7, Ex. L. 1969; amd. Sec. 1, Ch. 326, L. 1971; R.C.M. 1947, 84-2601; amd. Sec. 1, Ch. 742, L. 1991.

Cross-References

Exemption for rural telephone cooperatives, 35-18-503.

15-53-102. Statement required of telephone companies. (1) A person who is liable to tax under this chapter shall, within 60 days after the end of each quarter:

(a) file with the department of revenue a statement, in a form that the department may require and prescribe, showing the taxable revenue of the person during the preceding quarter and containing other information that the department may require; and

(b) pay the tax owed for the preceding quarter.

(2) The department may grant a reasonable extension of time for filing the statement upon good cause shown.

History: En. Sec. 2, Ch. 94, L. 1937; amd. Sec. 2, Ch. 213, L. 1957; amd. Sec. 2, Ch. 7, Ex. L. 1969; amd. Sec. 2, Ch. 326, L. 1971; amd. Sec. 138, Ch. 516, L. 1973; R.C.M. 1947, 84-2602; amd. Sec. 1, Ch. 294, L. 1979; amd. Sec. 2, Ch. 742, L. 1991.

15-53-103. Taxpayer records. Each person liable to tax under this chapter shall keep a record in such form as the department of revenue shall require, showing the total gross receipts as herein described and such other information as the department may require.

History: En. Sec. 5, Ch. 94, L. 1937; amd. Sec. 140, Ch. 516, L. 1973; R.C.M. 1947, 84-2605.

15-53-104. Department rules. The department of revenue shall have the power and it shall be its duty from time to time to adopt, publish, and enforce such rules not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this chapter.

History: En. Sec. 3, Ch. 94, L. 1937; amd. Sec. 139, Ch. 516, L. 1973; R.C.M. 1947, 84-2603.

15-53-105. Deficiency assessment — review — interest — penalty. (1) If the department of revenue determines that the amount of tax due is greater than the amount reported, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) (a) Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 10 days, the tax is delinquent and a penalty of 10% must be added to the amount of the deficiency.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 2, Ch. 676, L. 1991; amd. Sec. 3, Ch. 742, L. 1991; amd. Sec. 21, Ch. 811, L. 1991.

Cross-References

Deficiency assessment of dangerous drug tax, 15-25-113.

15-53-106. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-53-105 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983.

15-53-107 through 15-53-110 reserved.

15-53-111. Penalty and interest for delinquency — waiver. (1) License taxes due under this chapter become delinquent if not paid within 60 days after the end of each calendar quarter. The department of revenue shall add to the amount of all delinquent telephone company license taxes a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction of a month, computed on the total amount of license taxes. Interest is computed from the date the license taxes were due to the date of payment.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-53-102 or pay the tax due is provided to the department.

History: En Sec. 2, Ch. 294, L. 1979; amd. Sec. 3, Ch. 676, L. 1991; amd. Sec. 4, Ch. 742, L. 1991.

15-53-112. Estimation of tax upon failure to file statement or pay tax — notice. (1) If a person fails, neglects, or refuses to file the statement required by 15-53-102 within the time required or fails to pay the tax required by this chapter on or before the date payment is due, the department of revenue shall proceed to inform itself as best it may regarding the total gross income of the person from its telephone business within this state during the quarter.

(2) The department shall compute the amount of license taxes due from the person and shall mail to the person a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made, a warrant for distraint may be filed.

History: En Sec. 3, Ch. 294, L. 1979; amd. Sec. 25, Ch. 439, L. 1981.

15-53-113. Warrant for distraint. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded.

History: En Sec. 4, Ch. 294, L. 1979; amd. Sec. 26, Ch. 439, L. 1981.

15-53-114. Disposal of license taxes. License taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be credited to the general fund of the state.

History: En Sec. 5, Ch. 294, L. 1979; amd. Sec. 12, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 after "chapter" substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

15-53-115. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the

taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-53-116 through 15-53-125 reserved.

15-53-126. Terminated. Section 39(4), Ch. 15, Sp. L. July 1992.

History: En. Sec. 11, Ch. 15, Sp. L. July 1992.

CHAPTER 54

EXPRESS COMPANY LICENSE TAX

(Repealed. Sec. 1, Ch. 595, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-54-101. En. Sec. 1, Ch. 87, L. 1917; re-en. Sec. 2305, R.C.M. 1921; re-en. Sec. 2305, R.C.M. 1935; R.C.M. 1947, 84-1701.

15-54-102. En. Sec. 7, Ch. 87, L. 1917; amd. Sec. 1, Ch. 150, L. 1921; re-en. Sec. 2311, R.C.M. 1921; re-en. Sec. 2311, R.C.M. 1935; amd. Sec. 78, Ch. 516, L. 1973; R.C.M. 1947, 84-1707; amd. Sec. 6, Ch. 294, L. 1979.

15-54-103. En. Sec. 2, Ch. 87, L. 1917; re-en. Sec. 2306, R.C.M. 1921; re-en. Sec. 2306, R.C.M. 1935; amd. Sec. 75, Ch. 516, L. 1973; R.C.M. 1947, 84-1702; amd. Sec. 7, Ch. 294, L. 1979.

15-54-104. En. Sec. 3, Ch. 87, L. 1917; re-en. Sec. 2307, R.C.M. 1921; re-en. Sec. 2307, R.C.M. 1935; amd. Sec. 76, Ch. 516, L. 1973; R.C.M. 1947, 84-1703; amd. Sec. 8, Ch. 294, L. 1979.

15-54-105. En. Sec. 9, Ch. 87, L. 1917; re-en. Sec. 2313, R.C.M. 1921; re-en. Sec. 2313, R.C.M. 1935; R.C.M. 1947, 84-1709.

15-54-106 through 15-54-110. reserved.

15-54-111. En. Sec. 10, Ch. 294, L. 1979.

15-54-112. En. Sec. 9, Ch. 294, L. 1979; amd. Sec. 27, Ch. 439, L. 1981.

15-54-113. En. Sec. 11, Ch. 294, L. 1979; amd. Sec. 28, Ch. 439, L. 1981.

CHAPTER 55

FREIGHT LINE COMPANY LICENSE TAX

(Repealed. Sec. 15, Ch. 10, Sp. L. July 1992)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-55-101. En. Sec. 1, Ch. 137, L. 1949; amd. Sec. 152, Ch. 516, L. 1973; R.C.M. 1947, 84-4818.

15-55-102. En. Sec. 2, Ch. 137, L. 1949; amd. Sec. 1, Ch. 346, L. 1969; R.C.M. 1947, 84-4819.

15-55-103. En. Sec. 3, Ch. 137, L. 1949; amd. Sec. 2, Ch. 346, L. 1969; amd. Sec. 1, Ch. 339, L. 1971; amd. Sec. 153, Ch. 516, L. 1973; R.C.M. 1947, 84-4820.

15-55-104. En. Sec. 4, Ch. 137, L. 1949; amd. Sec. 154, Ch. 516, L. 1973; amd. Sec. 4, Ch. 36, L. 1977; R.C.M. 1947, 84-4821.

15-55-105. En. Sec. 5, Ch. 137, L. 1949; amd. Sec. 92, Ch. 405, L. 1973; R.C.M. 1947, 84-4822(part).

15-55-106. En. Sec. 5, Ch. 137, L. 1949; amd. Sec. 92, Ch. 405, L. 1973; R.C.M. 1947, 84-4822(part); amd. Sec. 11, Ch. 20, L. 1985; amd. Sec. 22, Ch. 811, L. 1991.

15-55-107. En. Sec. 7, Ch. 137, L. 1949; amd. Sec. 98, Ch. 405, L. 1973; R.C.M. 1947, 84-4824; amd. Sec. 29, Ch. 581, L. 1979. Repealed. Sec. 29, Ch. 811, L. 1991.

15-55-108. En. Sec. 12, Ch. 294, L. 1979; amd. Sec. 4, Ch. 676, L. 1991.

15-55-109. En. Sec. 13, Ch. 294, L. 1979; amd. Sec. 29, Ch. 439, L. 1981.

15-55-110. En. Sec. 14, Ch. 294, L. 1979.

15-55-111. En. Sec. 1, Ch. 194, L. 1983.

CHAPTER 56

SLEEPING CAR COMPANY LICENSE TAX

(Repealed. Sec. 2, Ch. 595, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-56-101. En. Sec. 1, Ch. 64, L. 1923; re-en. Sec. 2315.1, R.C.M. 1935; amd. Sec. 119, Ch. 516, L. 1973; amd. Sec. 5, Ch. 52, L. 1977; R.C.M. 1947, 84-2301.

15-56-102. En. Sec. 6, Ch. 64, L. 1923; re-en. Sec. 2315.6, R.C.M. 1935; amd. Sec. 124, Ch. 516, L. 1973; R.C.M. 1947, 84-2306; amd. Sec. 15, Ch. 294, L. 1979.

15-56-103. En. Sec. 2, Ch. 64, L. 1923; re-en. Sec. 2315.2, R.C.M. 1935; amd. Sec. 120, Ch. 516, L. 1973; R.C.M. 1947, 84-2302; amd. Sec. 16, Ch. 294, L. 1979.

15-56-104. En. Sec. 3, Ch. 64, L. 1923; re-en. Sec. 2315.3, R.C.M. 1935; amd. Sec. 121, Ch. 516, L. 1973; R.C.M. 1947, 84-2303.

15-56-105. En. Sec. 4, Ch. 64, L. 1923; re-en. Sec. 2315.4, R.C.M. 1935; amd. Sec. 122, Ch. 516, L. 1973; R.C.M. 1947, 84-2304.

15-56-106. En. Sec. 5, Ch. 64, L. 1923; re-en. Sec. 2315.5, R.C.M. 1935; amd. Sec. 123, Ch. 516, L. 1973; R.C.M. 1947, 84-2305.

15-56-107. En. Sec. 10, Ch. 64, L. 1923; re-en. Sec. 2315.10, R.C.M. 1935; R.C.M. 1947, 84-2310; amd. Sec. 18, Ch. 294, L. 1979.

15-56-108. En. Sec. 17, Ch. 294, L. 1979.

15-56-109 and 15-56-110. reserved.

15-56-111. En. Sec. 19, Ch. 294, L. 1979.

15-56-112. En. Sec. 20, Ch. 294, L. 1979; amd. Sec. 30, Ch. 439, L. 1981.

15-56-113. En. Sec. 21, Ch. 294, L. 1979; amd. Sec. 31, Ch. 439, L. 1981.

CHAPTER 57

STORE LICENSES

(Repealed. Sec. 3, Ch. 658, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-57-101. En. Sec. 10, Ch. 163, L. 1939; amd. Sec. 3, Ch. 160, L. 1971; amd. Sec. 5, Ch. 240, L. 1973; amd. Sec. 10, Ch. 52, L. 1977; R.C.M. 1947, 84-2410.

15-57-102. En. Sec. 1, Ch. 163, L. 1939; amd. Sec. 128, Ch. 516, L. 1973; amd. Sec. 6, Ch. 52, L. 1977; R.C.M. 1947, 84-2401; amd. Sec. 1, Ch. 132, L. 1979; amd. Sec. 12, Ch. 20, L. 1985; (3)En. Sec. 1, Ch. 417, L. 1991.

15-57-103. En. Sec. 2, Ch. 163, L. 1939; amd. Sec. 1, Ch. 122, L. 1955; amd. Sec. 9, Ch. 121, L. 1965; amd. Sec. 1, Ch. 160, L. 1971; amd. Sec. 1, Ch. 240, L. 1973; amd. Sec. 129, Ch. 516, L. 1973; amd. Sec. 7, Ch. 52, L. 1977; R.C.M. 1947, 84-2402.

15-57-104. En. Sec. 3, Ch. 163, L. 1939; amd. Sec. 130, Ch. 516, L. 1973; R.C.M. 1947, 84-2403.

15-57-105. En. Sec. 4, Ch. 163, L. 1939; amd. Sec. 2, Ch. 122, L. 1955; amd. Sec. 10, Ch. 121, L. 1965; amd. Sec. 2, Ch. 160, L. 1971; amd. Sec. 2, Ch. 240, L. 1973; amd. Sec. 131, Ch. 516, L. 1973; amd. Sec. 8, Ch. 52, L. 1977; amd. Sec. 1, Ch. 419, L. 1977; R.C.M. 1947, 84-2404.

15-57-106. En. Sec. 5, Ch. 163, L. 1939; amd. Sec. 11, Ch. 121, L. 1965; amd. Sec. 3, Ch. 240, L. 1973; amd. Sec. 1, Ch. 200, L. 1974; amd. Sec. 9, Ch. 52, L. 1977; R.C.M. 1947, 84-2405.

15-57-107. En. Sec. 7, Ch. 163, L. 1939; amd. Sec. 13, Ch. 121, L. 1965; amd. Sec. 4, Ch. 240, L. 1973; R.C.M. 1947, 84-2407.

15-57-108. En. Sec. 9, Ch. 163, L. 1939; R.C.M. 1947, 84-2409.

15-57-109. En. Sec. 12, Ch. 163, L. 1939; amd. Sec. 1, Ch. 266, L. 1971; amd. Sec. 6, Ch. 240, L. 1973; amd. Sec. 132, Ch. 516, L. 1973; amd. Sec. 19, Ch. 265, L. 1977; amd. Sec. 28, Ch. 518, L. 1977; R.C.M. 1947, 84-2412; amd. Sec. 1, Ch. 441, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 13, Ch. 79, L. 1983.

15-57-110. En. Sec. 11, Ch. 163, L. 1939; amd. Sec. 11, Ch. 52, L. 1977; R.C.M. 1947, 84-2411.

CHAPTER 58

COAL RETAILER'S LICENSE TAX

(Repealed. Sec. 2, Ch. 658, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

15-58-101. En. Sec. 1, Ch. 3, Ex. L. 1921; re-en. Sec. 2327, R.C.M. 1921; re-en. Sec. 2327, R.C.M. 1935; R.C.M. 1947, 84-1401(part).

15-58-102. En. Sec. 2, Ch. 3, Ex. L. 1921; re-en. Sec. 2328, R.C.M. 1921; re-en. Sec. 2328, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1975; R.C.M. 1947, 84-1402.

15-58-103. En. Sec. 3, Ch. 3, Ex. L. 1921; re-en. Sec. 2329, R.C.M. 1921; re-en. Sec. 2329, R.C.M. 1935; amd. Sec. 48, Ch. 516, L. 1973; R.C.M. 1947, 84-1403.

15-58-104. En. Sec. 5, Ch. 3, Ex. L. 1921; re-en. Sec. 2331, R.C.M. 1921; re-en. Sec. 2331, R.C.M. 1935; amd. Sec. 49, Ch. 516, L. 1973; amd. Sec. 3, Ch. 125, L. 1975; R.C.M. 1947, 84-1405.

15-58-105. (1), (3)En. Sec. 6, Ch. 3, Ex. L. 1921; re-en. Sec. 2332, R.C.M. 1921; re-en. Sec. 2332, R.C.M. 1935; amd. Sec. 50, Ch. 516, L. 1973; amd. Sec. 4, Ch. 125, L. 1975; Sec. 84-1406, R.C.M. 1947; (2)En. Sec. 4, Ch. 3, Ex. L. 1921; re-en. Sec. 2330, R.C.M. 1921; re-en. Sec. 2330, R.C.M. 1935; amd. Sec. 2, Ch. 125, L. 1975; Sec. 84-1404, R.C.M. 1947; R.C.M. 1947, 84-1404, 84-1406.

15-58-106. En. Sec. 8, Ch. 3, Ex. L. 1921; re-en. Sec. 2334, R.C.M. 1921; amd. Sec. 2, Ch. 74, L. 1931; re-en. Sec. 2334, R.C.M. 1935; amd. Sec. 51, Ch. 516, L. 1973; amd. Sec. 5, Ch. 125, L. 1975; R.C.M. 1947, 84-1408; amd. Sec. 32, Ch. 439, L. 1981.

15-58-107. En. 84-1408.1 by Sec. 6, Ch. 125, L. 1975; R.C.M. 1947, 84-1408.1; amd. Sec. 33, Ch. 439, L. 1981.

15-58-108. En. Sec. 17, Ch. 3, Ex. L. 1921; re-en. Sec. 2343, R.C.M. 1921; re-en. Sec. 2343, R.C.M. 1935; amd. Sec. 7, Ch. 125, L. 1975; R.C.M. 1947, 84-1417.

15-58-109. En. Sec. 15, Ch. 3, Ex. L. 1921; re-en. Sec. 2341, R.C.M. 1921; re-en. Sec. 2341, R.C.M. 1935; R.C.M. 1947, 84-1415.

15-58-110. En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 23, Ch. 811, L. 1991.

15-58-111. En. Sec. 2, Ch. 14, L. 1983.

15-58-112 through 15-58-120 reserved.

15-58-121. En. Sec. 10, Ch. 3, Ex. L. 1921; re-en. Sec. 2336, R.C.M. 1921; re-en. Sec. 2336, R.C.M. 1935; R.C.M. 1947, 84-1410.

15-58-122. En. Sec. 11, Ch. 3, Ex. L. 1921; re-en. Sec. 2337, R.C.M. 1921; re-en. Sec. 2337, R.C.M. 1935; R.C.M. 1947, 84-1411.

15-58-123. En. Sec. 13, Ch. 3, Ex. L. 1921; re-en. Sec. 2339, R.C.M. 1921; re-en. Sec. 2339, R.C.M. 1935; R.C.M. 1947, 84-1413.

15-58-124. En. Sec. 7, Ch. 3, Ex. L. 1921; re-en. Sec. 2333, R.C.M. 1921; re-en. Sec. 2333, R.C.M. 1935; R.C.M. 1947, 84-1407.

15-58-125. En. Sec. 16, Ch. 3, Ex. L. 1921; re-en. Sec. 2342, R.C.M. 1921; re-en. Sec. 2342, R.C.M. 1935; R.C.M. 1947, 84-1416.

15-58-126. En. Sec. 1, Ch. 194, L. 1983.

CHAPTER 59

CEMENT TAXES

Part 1 — Cement and Gypsum Producers

15-59-101. Definitions.
15-59-102. License tax on producers and importers of gypsum and cement.
15-59-103. Repealed.
15-59-104. Manufacturers to keep records.
15-59-105. Quarterly statement and payment of tax.
15-59-106. Procedure to estimate tax on failure to file statement — penalty.
15-59-107. Warrant for distraint.
15-59-108. Deposit of taxes.
15-59-109. License tax supplemental.
15-59-110. Duty to file statement.
15-59-111. Renumbered 15-59-121 by Code Commissioner, 1983.
15-59-112. Deficiency assessment — review — interest.
15-59-113. Credit for overpayment — interest on overpayment.
15-59-114. Statute of limitations.

15-59-115 through 15-59-120 reserved.
15-59-121. Penalty for violations.
15-59-122 through 15-59-125 reserved.
15-59-126. Terminated.

Part 2 — Cement Dealers

15-59-201. License tax on sales of cement and byproducts.
15-59-202. Repealed.
15-59-203. Record of cement received.
15-59-204. Statement of product sold — payment of tax.
15-59-205. Procedure to estimate tax on failure to file — penalty.
15-59-206. Warrant for distraint.
15-59-207. Invoice to state whether tax paid.
15-59-208. Deposit of license taxes.
15-59-209. License taxes supplemental.
15-59-210. Duty to file statement.
15-59-211. Renumbered 15-59-221 by Code Commissioner, 1983.
15-59-212. Deficiency assessment — review — interest.
15-59-213. Credit for overpayment — interest on overpayment.
15-59-214. Statute of limitations.
15-59-215 through 15-59-220 reserved.
15-59-221. Penalty for violations.
15-59-222 through 15-59-225 reserved.
15-59-226. Terminated.

Part 1
Cement and Gypsum Producers

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-59-101. Definitions. (1) The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum, as the same are defined in this section, shipped or transported into this state from point of origin without this state.

(2) The words "products of cement or gypsum", as used in 15-59-102, shall, in addition to the articles herein specifically enumerated, include all manufactured products into which gypsum enters as a component part to the extent of not less than 50% by weight. No double taxation of either cement, gypsum, or the products thereof is imposed by this part.

History: (1)En. Sec. 2, Ch. 15, Ex. L. 1921; re-en. Sec. 2357, R.C.M. 1921; amd. Sec. 1, Ch. 127, L. 1925; amd. Sec. 1, Ch. 166, L. 1931; re-en. Sec. 2357, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1945; amd. Sec. 37, Ch. 516, L. 1973; amd. Sec. 1, Ch. 108, L. 1977; Sec. 84-1202, R.C.M. 1947; (2)En. Sec. 2, Ch. 166, L. 1931; re-en. Sec. 2357.1, R.C.M. 1935; amd. Sec. 2, Ch. 192, L. 1945; Sec. 84-1203, R.C.M. 1947; R.C.M. 1947, 84-1202(2), 84-1203.

15-59-102. License tax on producers and importers of gypsum and cement. Every person engaged in or carrying on the business in the state of producing or manufacturing cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum and any person who imports into this state any such products for sale or use must pay to the department of revenue for the use of the state a license tax for engaging in and carrying on such business in the state in an amount equal to the following sums:

(1) for each ton of cement produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove enumerated or imported by such person into this state for sale or use, 22 cents;

(2) for each ton of gypsum produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove named or imported by such person into this state for such sale or use, 5 cents.

History: En. Sec. 2, Ch. 15, Ex. L. 1921; re-en. Sec. 2357, R.C.M. 1921; amd. Sec. 1, Ch. 127, L. 1925; amd. Sec. 1, Ch. 166, L. 1931; re-en. Sec. 2357, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1945; amd. Sec. 37, Ch. 516, L. 1973; amd. Sec. 1, Ch. 108, L. 1977; R.C.M. 1947, 84-1202(1).

15-59-103. Repealed. Sec. 4, Ch. 334, L. 1981.

History: En. Sec. 4, Ch. 15, Ex. L. 1921; re-en. Sec. 2359, R.C.M. 1921; re-en. Sec. 2359, R.C.M. 1935; amd. Sec. 4, Ch. 192, L. 1945; amd. Sec. 39, Ch. 516, L. 1973; R.C.M. 1947, 84-1205.

15-59-104. Manufacturers to keep records. Every such person shall keep a record in such form as the department of revenue may require of all cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum manufactured or produced by such person in this state. Such records shall at all times during the business hours of the day be subject to inspection by the department, its agents or employees.

History: En. Sec. 5, Ch. 15, Ex. L. 1921; re-en. Sec. 2360, R.C.M. 1921; re-en. Sec. 2360, R.C.M. 1935; amd. Sec. 5, Ch. 192, L. 1945; amd. Sec. 40, Ch. 516, L. 1973; R.C.M. 1947, 84-1206.

15-59-105. Quarterly statement and payment of tax. (1) Each person must, within 30 days after the end of each quarter, make out on forms prescribed by the department of revenue, and deliver to the department a statement showing the total number of tons of cement or gypsum produced by such person or used by him in the manufacture of the respective articles or products enumerated in 15-59-101(2) and 15-59-102 or imported by such person into the state of Montana for sale or use during each month of such quarter and during the whole quarter and such other information as the department may require, together with the total amount due to the state as license taxes for such quarter.

(2) Such annual license tax as imposed by 15-59-102 shall be paid in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of such license tax due for each such quarter shall be paid to the department within 30 days after the end of each such quarter and at the same time such statement is delivered to the department.

(3) Any such person engaged in carrying on such business at more than one place or operating more than one factory or plant in this state may include all thereof in one statement.

(4) The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: (1), (3), (4)En. Sec. 6, Ch. 15, Ex. L. 1921; re-en. Sec. 2361, R.C.M. 1921; re-en. Sec. 2361, R.C.M. 1935; amd. Sec. 6, Ch. 192, L. 1945; amd. Sec. 41, Ch. 516, L. 1973; amd. Sec. 2, Ch. 108, L. 1977; Sec. 84-1207, R.C.M. 1947; (2)En. Sec. 3, Ch. 15, Ex. L. 1921; re-en. Sec. 2358, R.C.M. 1921; re-en. Sec. 2358, R.C.M. 1935; amd. Sec. 3, Ch. 192, L. 1945; amd. Sec. 38, Ch. 516, L. 1973; Sec. 84-1204, R.C.M. 1947; R.C.M. 1947, 84-1204, 84-1207.

15-59-106. Procedure to estimate tax on failure to file statement — penalty. (1) If any such person shall fail, neglect, or refuse to file any statement required by 15-59-105 within the time required or shall fail to pay the tax required by this part on or before the date such payment is due, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the amounts of the respective articles or products enumerated in 15-59-101(2) and 15-59-102 manufactured or produced by such person within this state or imported by such person into the state during such quarter and during each month thereof and shall determine and fix the amount of the license taxes due to the state from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% a month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a warrant for distraint may be filed.

(4) The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-59-105 is provided to the department.

History: En. Sec. 8, Ch. 15, Ex. L. 1921; re-en. Sec. 2363, R.C.M. 1921; re-en. Sec. 2363, R.C.M. 1935; amd. Sec. 8, Ch. 192, L. 1945; amd. Sec. 42, Ch. 516, L. 1973; amd. Sec. 3, Ch. 108, L. 1977; R.C.M. 1947, 84-1209; amd. Sec. 34, Ch. 439, L. 1981.

15-59-107. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-1213 by Sec. 4, Ch. 108, L. 1977; R.C.M. 1947, 84-1213; amd. Sec. 35, Ch. 439, L. 1981.

15-59-108. Deposit of taxes. All license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be deposited to the credit of the general fund of the state.

History: En. Sec. 9, Ch. 15, Ex. L. 1921; re-en. Sec. 2364, R.C.M. 1921; re-en. Sec. 2364, R.C.M. 1935; R.C.M. 1947, 84-1210; amd. Sec. 13, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 after "part" substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall" Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

15-59-109. License tax supplemental. The license taxes herein provided for shall be in addition to all taxes and fees now required to be paid by the persons subject to the provisions of this part.

History: En. Sec. 11, Ch. 15, Ex. L. 1921; re-en. Sec. 2366, R.C.M. 1921; re-en. Sec. 2366, R.C.M. 1935; R.C.M. 1947, 84-1212.

15-59-110. Duty to file statement. It shall be unlawful for any person to fail, neglect, or refuse to file any statement or certificate required by 15-59-105 in the manner or within the time herein required or to make such statement false in any particular.

History: En. Sec. 7, Ch. 15, Ex. L. 1921; re-en. Sec. 2362, R.C.M. 1921; re-en. Sec. 2362, R.C.M. 1935; amd. Sec. 7, Ch. 192, L. 1945; R.C.M. 1947, 84-1208.

15-59-111. Renumbered 15-59-121 by Code Commissioner, 1983.

15-59-112. Deficiency assessment — review — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, as provided in 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 24, Ch. 811, L. 1991.

15-59-113. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-59-112 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 2, Ch. 14, L. 1983.

15-59-114. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-59-115 through 15-59-120 reserved.

15-59-121. Penalty for violations. Any violation of the provisions of 15-59-101, 15-59-102, 15-59-104 through 15-59-106, 15-59-110, 15-59-112, or 15-59-113 shall be deemed a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 10, Ch. 15, Ex. L. 1921; re-en. Sec. 2365, R.C.M. 1921; re-en. Sec. 2365, R.C.M. 1935; amd. Sec. 9, Ch. 192, L. 1945; R.C.M. 1947, 84-1211; MCA 1981, 15-59-111; redes. 15-59-121 by Code Commissioner, 1983; amd. Sec. 52, Ch. 370, L. 1987.

15-59-122 through 15-59-125 reserved.

15-59-126. Terminated. Section 39(4), Ch. 15, Sp. L. July 1992.

History: En. Sec. 13, Ch. 15, Sp. L. July 1992.

Part 2
Cement Dealers

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

15-59-201. License tax on sales of cement and byproducts. Every person who engages in or carries on the occupation or business in this state of retailing or selling at retail cement, cement plaster, gypsum plaster, or other byproducts of cement must pay to the department of revenue a license tax for engaging in and carrying on such business in an amount equal to 22 cents per ton of cement and 5 cents per ton on cement plaster, gypsum plaster, or other byproducts of cement sold by such person during such year and for the manufacturing or producing of which no person has paid or assumed a liability for the payment of any license tax to the state under any law of this state.

History: **En. Sec. 2, Ch. 16, Ex. L. 1921; re-en. Sec. 2368, R.C.M. 1921; amd. Sec. 2, Ch. 127, L. 1925; re-en. Sec. 2368, R.C.M. 1935; amd. Sec. 1, Ch. 127, L. 1975; amd. Sec. 1, Ch. 106, L. 1977; R.C.M. 1947, 84-1102.**

15-59-202. Repealed. Sec. 4, Ch. 334, L. 1981.

History: **En. Sec. 3, Ch. 16, Ex. L. 1921; re-en. Sec. 2369, R.C.M. 1921; re-en. Sec. 2369, R.C.M. 1935; amd. Sec. 33, Ch. 516, L. 1973; R.C.M. 1947, 84-1103.**

15-59-203. Record of cement received. Each and every person engaging in or carrying on such occupation in this state shall keep a record showing all cement, cement plaster, gypsum plaster, and other byproducts of cement purchased or received by or delivered to such person for sale by such person at retail in this state for the manufacturing or production of which cement, cement plaster, gypsum plaster, or other byproducts of cement no person has paid or assumed liability for the payment of any license tax to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of barrels or tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the department of revenue, its agents or employees.

History: **En. Sec. 5, Ch. 16, Ex. L. 1921; re-en. Sec. 2371, R.C.M. 1921; re-en. Sec. 2371, R.C.M. 1935; amd. Sec. 34, Ch. 516, L. 1973; R.C.M. 1947, 84-1105.**

15-59-204. Statement of product sold — payment of tax. (1) Each and every person must, within 30 days after the end of each quarter, prepare a statement on forms prescribed by the department showing the total number of barrels or tons of such commodities sold by such persons during such quarter for the manufacturing or production of which no person has paid or assumed liability for the payment of any license tax to the state under any laws of this state, together with the total amount due to the state as license taxes from such person for such quarter.

(2) The license tax of 22 cents per ton and 5 cents per ton shall be paid in quarterly installments for the quarters ending March 31, June 30, September 30, and December 31 in each year, and the total amount of such license tax becoming due for any quarter shall be paid to the department of revenue within 30 days after the end of the quarter for which the same is due and at the same time such statement is delivered to the department.

(3) The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

History: **(1), (3)En. Sec. 6, Ch. 16, Ex. L. 1921; re-en. Sec. 2372, R.C.M. 1921; re-en. Sec. 2372, R.C.M. 1935; amd. Sec. 35, Ch. 516, L. 1973; amd. Sec. 3, Ch. 127, L. 1975; Sec. 84-1106, R.C.M. 1947; (2)En. Sec. 4, Ch. 16, Ex. L. 1921; re-en. Sec. 2370, R.C.M. 1921; re-en. Sec. 2370, R.C.M. 1935; amd. Sec. 2, Ch. 127, L. 1975; amd. Sec. 2, Ch. 106, L. 1977; Sec. 84-1104, R.C.M. 1947; R.C.M. 1947, 84-1104, 84-1106.**

15-59-205. Procedure to estimate tax on failure to file — penalty. (1) If any person shall fail, neglect, or refuse to make or file the statement required by 15-59-204 within the time required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license tax due from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license tax a penalty of 10% of the amount of such license tax plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license tax was due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a warrant for distraint may be filed.

(4) The 10% penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-59-204 is provided to the department.

History: En. Sec. 8, Ch. 16, Ex. L. 1921; re-en. Sec. 2374, R.C.M. 1921; re-en. Sec. 2374, R.C.M. 1935; amd. Sec. 36, Ch. 516, L. 1973; amd. Sec. 4, Ch. 127, L. 1975; R.C.M. 1947, 84-1108; amd. Sec. 36, Ch. 439, L. 1981.

15-59-206. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded.

History: En. 84-1108.1 by Sec. 5, Ch. 127, L. 1975; R.C.M. 1947, 84-1108.1; amd. Sec. 37, Ch. 439, L. 1981.

15-59-207. Invoice to state whether tax paid. Every person engaged in the business in this state of manufacturing or producing cement, cement plaster, gypsum plaster, or other byproduct of cement shall make out and deliver to every person to whom any of such commodities are sold or delivered by such person an invoice covering the commodity or commodities so sold or delivered, on which invoice shall be stated whether or not such person has paid or assumes liability for the payment of the license tax for manufacturing or producing the same to the state of Montana under any laws of this state.

History: En. Sec. 10, Ch. 16, Ex. L. 1921; re-en. Sec. 2376, R.C.M. 1921; re-en. Sec. 2376, R.C.M. 1935; R.C.M. 1947, 84-1110.

15-59-208. Deposit of license taxes. All license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be deposited to the credit of the general fund of the state.

History: En. Sec. 12, Ch. 16, Ex. L. 1921; re-en. Sec. 2378, R.C.M. 1921; re-en. Sec. 2378, R.C.M. 1935; R.C.M. 1947, 84-1112; amd. Sec. 14, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 after "part" substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

15-59-209. License taxes supplemental. The license taxes herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this part.

History: **En. Sec. 14, Ch. 16, Ex. L. 1921; re-en. Sec. 2380, R.C.M. 1921; re-en. Sec. 2380, R.C.M. 1935; R.C.M. 1947, 84-1114.**

15-59-210. Duty to file statement. It shall be unlawful for any person to fail, neglect, or refuse to file any statement or certificate required by this part in the manner or within the time required or to make any such statement or certificate false in any particular.

History: **En. Sec. 7, Ch. 16, Ex. L. 1921; re-en. Sec. 2373, R.C.M. 1921; re-en. Sec. 2373, R.C.M. 1935; R.C.M. 1947, 84-1107.**

15-59-211. Renumbered 15-59-221 by Code Commissioner, 1983.

15-59-212. Deficiency assessment — review — interest. (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

History: **En. Sec. 1, Ch. 14, L. 1983; amd. Sec. 25, Ch. 811, L. 1991.**

15-59-213. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-59-212 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

History: **En. Sec. 2, Ch. 14, L. 1983.**

15-59-214. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

History: En. Sec. 1, Ch. 194, L. 1983.

15-59-215 through 15-59-220 reserved.

15-59-221. Penalty for violations. Any violation of any of the provisions of this part shall be deemed a misdemeanor and shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 13, Ch. 16, Ex. L. 1921; re-en. Sec. 2379, R.C.M. 1921; re-en. Sec. 2379, R.C.M. 1935; R.C.M. 1947, 84-1113; MCA 1981, 15-59-211; redes. 15-59-221 by Code Commissioner, 1983.

15-59-222 through 15-59-225 reserved.

15-59-226. Terminated. Section 39(4), Ch. 15, Sp. L. July 1992.

History: En. Sec. 14, Ch. 15, Sp. L. July 1992.

CHAPTER 60

NURSING FACILITY UTILIZATION FEE

Part 1 — General Provisions

15-60-101. Definitions.
15-60-102. Utilization fee for bed days in nursing facilities.
15-60-103. Relation to other taxes and fees.
15-60-104. Rulemaking authority.

Part 2 — Collection of Fee

15-60-201. Reporting and collection of fee.
15-60-202. Audit — records.
15-60-203. Periods of limitation.
15-60-204. Penalty and interest for delinquent fees — waiver.
15-60-205. Estimated fee on failure to file.
15-60-206. Deficiency assessment — hearing.

15-60-207. Closing agreements.
15-60-208. Credit for overpayment — interest on overpayment.
15-60-209. Warrant for distraint.
15-60-210. Disposition of fee — nursing facility account.

Part 1
General Provisions

15-60-101. Definitions. For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Bed day" means each whole 24-hour period that a resident of a nursing facility is present in the facility and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while the resident is on temporary leave from the facility.

(b) The term includes all periods of 24 hours described in subsection (1)(a) regardless of the source of payment. The term also includes the day of a resident's admission to a nursing facility and the day of the resident's death, even though the resident is present less than a whole 24-hour period on these days.

(2) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(3) "Department" means the department of revenue.

(4) "Nursing facility" or "facility" means a health care facility licensed by the department of health and environmental sciences as a nursing facility to provide skilled nursing care or intermediate nursing care. The term includes nursing facilities, whether they are:

(a) operated as nonprofit or for-profit facilities;

(b) freestanding or part of another health care facility; or

(c) publicly or privately operated.

(5) "Skilled nursing care" and "intermediate nursing care" have the same meaning as those terms are defined in 50-5-101.

(6) "Report" means the report of bed days required in 15-60-201.

(7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as provided in 15-60-102.

History: En. Sec. 1, Ch. 746, L. 1991; amd. Sec. 1, Ch. 558, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 558 in definition of bed day, in first sentence of (b) after "periods", substituted "of 24 hours described in subsection (1)(a) regardless of the source of payment" for "for which the nursing facility is reimbursed by a third-party payor, including but not limited to a private or governmental insurer or public assistance program, but it does not include any period for which the nursing facility may be reimbursed only by the resident, a friend of the resident, or a member of the resident's family"; and made minor changes in style. Amendment effective July 1, 1993.

Applicability: Section 5, Ch. 558, L. 1993, provided: "[This act] applies to all bed days on or after July 1, 1993."

Effective Date — Rulemaking: Section 6(1), Ch. 558, L. 1993, provided: "[Sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] are effective July 1, 1993, except that rules to administer [sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] may be adopted, but may not be implemented, prior to July 1, 1993."

15-60-102. Utilization fee for bed days in nursing facilities. A nursing facility in the state shall pay to the department of revenue a utilization fee in the amount of $2 for each bed day in the facility during fiscal year 1994 and $2.80 for each bed day in the facility during fiscal year 1995 and each year thereafter. The fees collected must be deposited in the nursing facility state special revenue account established in 15-60-210.

History: En. Sec. 2, Ch. 746, L. 1991; amd. Sec. 2, Ch. 558, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 558 in first sentence increased utilization fee from $1 in fiscal year 1992 and $2 in fiscal year 1993 to $2 in fiscal year 1994 and $2.80 in fiscal year 1995 and inserted second sentence requiring deposit of fees in the nursing facility state special revenue account. Amendment effective July 1, 1993.

Applicability: Section 5, Ch. 558, L. 1993, provided: "[This act] applies to all bed days on or after July 1, 1993."

Effective Date — Rulemaking: Section 6(1), Ch. 558, L. 1993, provided: "[Sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] are effective July 1, 1993, except that rules to administer [sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] may be adopted, but may not be implemented, prior to July 1, 1993."

15-60-103. Relation to other taxes and fees. The utilization fee imposed under 15-60-102 is in addition to any other taxes and fees required by law to be paid by nursing facilities.

History: En. Sec. 14, Ch. 746, L. 1991.

15-60-104. Rulemaking authority. The department of revenue may adopt rules necessary to implement and administer this chapter.

History: En. Sec. 15, Ch. 746, L. 1991.

Part 2
Collection of Fee

15-60-201. Reporting and collection of fee. (1) A nursing facility shall report to the department of revenue, following the end of each calendar quarter, the number of bed days in the facility during the quarter. The report must be in the form prescribed by the department and is due on or before the last day of the month following the close of each calendar quarter. The report must be accompanied by a payment in an amount equal to the fee required to be paid under 15-60-102.

(2) The department of health and environmental sciences shall provide the department at the end of each calendar quarter with a list of facilities as defined in 15-60-101(4).

History: En. Sec. 3, Ch. 746, L. 1991.

15-60-202. Audit — records. (1) The department of revenue may audit the records and other documents of any nursing facility to ensure that the proper utilization fee has been collected.

(2) The department may require the facility to provide records and other documentation, including books, ledgers, and registers, necessary for the department to verify the proper amount of the utilization fee paid.

(3) A facility shall maintain and make available for inspection by the department sufficient records and other documentation to demonstrate the number of bed days in the facility subject to the utilization fee. The facility shall maintain these records for a period of at least 5 years from the date the report is due.

History: En. Sec. 4, Ch. 746, L. 1991.

15-60-203. Periods of limitation. (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the quarter for which a report is filed unless the notice of additional fees proposed to be assessed is mailed within 5 years from the date the report was filed. For the purposes of this section, a report filed before the last day prescribed for filing is considered filed on the last day. If, before the expiration of the period prescribed for assessment of the fee, the facility consents in writing to an assessment after the 5-year period, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be paid or allowed with respect to the year for which a report is filed after 5 years from the last day prescribed for filing the report or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period, the facility files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the facility has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit is filed or a credit or refund allowed in the event no claim is filed is automatically extended.

History: En. Sec. 5, Ch. 746, L. 1991.

15-60-204. Penalty and interest for delinquent fees — waiver. (1) If the fee for any facility is not paid on or before the due date of the report as provided in 15-60-201(1), a penalty of 10% of the amount of the fee due must be assessed unless it is shown that the failure was due to reasonable cause and not neglect.

(2) If any fee due under 15-60-102 is not paid when due, interest is added to the tax due at the rate of 12% a year from the due date until paid.

History: En. Sec. 6, Ch. 746, L. 1991.

15-60-205. Estimated fee on failure to file. For the purpose of ascertaining the correctness of any report or for the purpose of making an estimate of bed day use of any facility where information has been obtained, the department may:

(1) examine or cause to have examined by any designated agent or representative any books, papers, records, or memoranda bearing upon the matters required to be included in the report;

(2) require the attendance of any officer or employee of the facility rendering the report or the attendance of any other person in the premises having relevant knowledge; and

(3) take testimony and require production of any other material for its information.

History: En. Sec. 7, Ch. 746, L. 1991; amd. Sec. 19, Ch. 746, L. 1991.

15-60-206. Deficiency assessment — hearing. (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the facility may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fees liability. If no protest is filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If such protest is filed, the department shall reconsider the proposed assessment and, if the facility has so requested, shall grant the facility an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the department's action upon the protest is final when it mails notice of its action to the facility.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand to the facility for payment, and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on any deficiency assessment bears interest from the date specified in 15-60-203 for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices.

History: En. Sec. 8, Ch. 746, L. 1991.

15-60-207. Closing agreements. (1) The director of the department or any person authorized in writing by him is authorized to enter into an agreement with any facility relating to the liability of the facility in respect to the fees imposed by this chapter for any period.

(2) An agreement under this section is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.

History: En. Sec. 9, Ch. 746, L. 1991.

15-60-208. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of fees, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest then due from the facility and the balance must be refunded to the facility or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsections (2)(a) and (2)(b), interest is allowed on overpayments at the same rate as is charged on delinquent fees due from the due date of the report or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest does not accrue during any period during which the processing of a claim for refund is delayed more than 30 days by reason of failure of the facility to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest is allowed:

(a) if the overpayment is refunded within 6 months from the date the report is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $1.

(3) A payment not made incident to a discharge of actual utilization fee liability or a payment reasonably assumed to be imposed by this chapter is not considered an overpayment with respect to which interest is allowable.

History: En. Sec. 10, Ch. 746, L. 1991.

15-60-209. Warrant for distraint. If the utilization fee is not paid when due, the department of revenue may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

History: En. Sec. 12, Ch. 746, L. 1991.

15-60-210. Disposition of fee — nursing facility account. (1) All proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of 15-1-501(6), be deposited in the nursing facility state special revenue account established in subsection (2).

(2) There is a nursing facility account in the state special revenue fund. The purpose of the account is to provide a continuing source of revenue for nursing facility reimbursements as appropriated by the legislature.

History: En. Sec. 13, Ch. 746, L. 1991; amd. Sec. 15, Ch. 455, L. 1993; amd. Sec. 3, Ch. 558, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 455 in (1), after "must", inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Chapter 558 at end of (1) substituted "nursing facility state special revenue account established in subsection (2)" for "state general fund"; and inserted (2) establishing the nursing facility account. Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Applicability: Section 5, Ch. 558, L. 1993, provided: "[This act] applies to all bed days on or after July 1, 1993."

Effective Date — Rulemaking: Section 6(1), Ch. 558, L. 1993, provided: "[Sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] are effective July 1, 1993, except that rules to administer [sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] may be adopted, but may not be implemented, prior to July 1, 1993."

CHAPTERS 61 THROUGH 64

RESERVED

CHAPTER 65

LODGING FACILITY USE TAX

Part 1 — General Provisions

15-65-101. Definitions.
15-65-102. Rulemaking authority.
15-65-103 through 15-65-110 reserved.
15-65-111. Tax rate.
15-65-112. Collection and reporting.

15-65-113. Audits — records.
15-65-114. Registration number — application to department.
15-65-115. Failure to pay or file — penalty — review — interest.
15-65-116. Credit for overpayment — interest on overpayment.
15-65-117 through 15-65-120 reserved.
15-65-121. Distribution of tax proceeds — general fund loan authority.
15-65-122. Qualification of nonprofit entities for receipt of funds — limitation on administrative costs.
15-65-123 through 15-65-130 reserved.
15-65-131. State agencies to account for in-state lodging expenditures.
15-65-132 through 15-65-135 reserved.
15-65-136. Additional tax — allocation.

Part 1
General Provisions

15-65-101. Definitions. For purposes of this part, the following definitions apply:

(1) "Accommodation charge" means the fee charged by the owner or operator of a facility for use of the facility for lodging, including bath house facilities, but excluding charges for meals, transportation, entertainment, or any other similar charges.

(2) "Campground" means a place, publicly or privately owned, used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes. The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(3) "Council" means the tourism advisory council established in 2-15-1816.

(4) "Facility" means a building containing individual sleeping rooms or suites, providing overnight lodging facilities for periods of less than 30 days to the general public for compensation. The term includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility. The term does not include any health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the age of 18 years for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(5) "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city or consolidated city-county in which the bureau is located.

(6) "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana law and recognized by the council as the entity

for promoting tourism within one of several regions established by executive order of the governor.

History: **En. Sec. 1, Ch. 607, L. 1987.**

15-65-102. Rulemaking authority. The department of revenue shall adopt such rules as may be necessary to implement and administer this part.

History: **En. Sec. 11, Ch. 607, L. 1987.**

Cross-References

Adoption of administrative rules, Title 2, ch. 4, part 3.

Rulemaking authority of Department of Commerce, 2-15-1816.

15-65-103 through 15-65-110 reserved.

15-65-111. Tax rate. (1) There is imposed on the user of a facility a tax at a rate equal to 4% of the accommodation charge collected by the facility.

(2) Accommodation charges do not include charges for rooms used for purposes other than lodging.

History: **En. Sec. 2, Ch. 607, L. 1987.**

15-65-112. Collection and reporting. (1) The owner or operator of a facility shall collect the tax imposed by 15-65-111.

(2) The owner or operator shall report to the department of revenue, at the end of each calendar quarter, the gross receipts collected during that quarter attributable to accommodation charges for the use of the facility. The report is due on or before the last day of the month following the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax required to be collected under subsection (1).

History: **En. Sec. 3, Ch. 607, L. 1987; amd. Sec. 5, Ch. 676, L. 1991.**

15-65-113. Audits — records. (1) The department of revenue may audit the books and records of any owner or operator to ensure that the proper amount of tax imposed by 15-65-111 has been collected. An audit may be done on the premises of the owner or operator of a facility or at any other convenient location.

(2) The department may request the owner or operator of a facility to provide the department with books, ledgers, registers, or other documents necessary to verify the correct amount of tax.

(3) The owner or operator of a facility shall maintain and have available for inspection by the department books, ledgers, registers, or other documents showing the collection of accommodation charges for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this part, the amount of tax due under any return must be determined by the department within 5 years after the return is made, and the department thereafter is barred from revising any such return or recomputing the tax due thereon, and no proceeding in court for the collection of the tax may be instituted unless notice of any additional tax is provided within such period.

(5) An application for revision may be filed with the department by an owner or operator of a facility within 5 years from the original due date of the return.

History: **En. Sec. 4, Ch. 607, L. 1987.**

15-65-114. Registration number — application to department. (1) The owner or operator of a facility shall apply to the department of revenue for a registration number.

(2) The application must be made on a form provided by the department.

(3) Upon completion of the application and delivery of the application to the department, the department must assign a registration number to the owner, operator, or facility, as appropriate.

History: En. Sec. 5, Ch. 607, L. 1987.

15-65-115. Failure to pay or file — penalty — review — interest. (1) An owner or operator of a facility who fails to file the report as required by 15-65-112 must be assessed a penalty of 10% of the tax that should have been collected during the calendar quarter. Upon a showing of good cause, the department of revenue may waive the penalty.

(2) An owner or operator of a facility who fails to make payment or fails to report and make payment as required by 15-65-112 must be assessed a penalty of 10% of the amount that was not paid. Upon a showing of good cause, the department may waive the penalty.

(3) (a) If an owner or operator of a facility fails to file the report required by 15-65-112 or if the department of revenue determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or operator. The provisions of 15-1-211 apply to any assessment by the department of revenue. The taxpayer may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the owner or operator. The tax is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(4) The amount required to be paid under 15-65-112 accrues interest at the rate of 1% a month or part thereof from delinquency until paid.

History: En. Sec. 6, Ch. 607, L. 1987; amd. Secs. 6, 19, Ch. 676, L. 1991; amd. Sec. 26, Ch. 811, L. 1991.

15-65-116. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the

taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

History: En. Sec. 12, Ch. 676, L. 1991.

15-65-117 through 15-65-120 reserved.

15-65-121. Distribution of tax proceeds — general fund loan authority. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501(6), be deposited in an account in the state special revenue fund to the credit of the department of revenue. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501(6) and as provided in subsections (1)(a) through (1)(d), the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the general fund. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the general fund is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use, subject to 23-1-131; and

(d) the balance of the proceeds as follows:

(i) 75% to be used directly by the department of commerce;

(ii) except as provided in subsection (1)(d)(iii), 25% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(iii) if 25% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located is to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The department of commerce may use general fund loans for efficient implementation of this section.

History: En. Sec. 7, Ch. 607, L. 1987; amd. Sec. 15, Ch. 607, L. 1987; amd. Sec. 18, Ch. 83, L. 1989; amd. Sec. 2, Ch. 647, L. 1989; amd. Sec. 1, Ch. 11, Sp. L. July 1992; amd. Sec. 16, Ch. 455, L. 1993; amd. Sec. 1, Ch. 574, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 455 in first and third sentences of (1) inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Chapter 574 in (1), near middle, substituted "subsections (1)(a) through (1)(d)" for "subsections (1)(a) through (1)(c)" and near end inserted "and to the department of fish, wildlife, and parks"; inserted (1)(c) giving that Department 6.5% for maintenance of state park facilities; in (1)(d) substituted "subsection (1)(d)(iii)" for "subsection (1)(c)(iii)"; and made minor changes in style. Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

15-65-122. Qualification of nonprofit entities for receipt of funds — limitation on administrative costs. (1) The department of revenue shall provide the council with quarterly reports of regional tax proceeds and tax proceeds of cities and consolidated city-counties that qualify for disbursement of funds under 15-65-121.

(2) No funds may be disbursed to a regional nonprofit tourism corporation or nonprofit convention and visitors bureau until that entity has submitted an annual marketing plan to the council and that plan has been approved by the council.

(3) A maximum of 20% of the funds received by a regional nonprofit tourism corporation or nonprofit convention and visitors bureau may be used for administrative purposes as defined by the council.

History: En. Sec. 8, Ch. 607, L. 1987.

15-65-123 through 15-65-130 reserved.

15-65-131. State agencies to account for in-state lodging expenditures. Each state agency shall account for in-state lodging expenditures in a manner that will enable the department of revenue to determine total expenditures for in-state lodging by state agencies in order to make an allocation of a portion of the tax proceeds imposed by 15-65-111 to the general fund as provided in 15-65-121.

History: **En. Sec. 1, Ch. 647, L. 1989.**

15-65-132 through 15-65-135 reserved.

15-65-136. *(Temporary)* **Additional tax — allocation.** (1) An additional tax is imposed on the user of a facility at a rate equal to 0.28% of the accommodation charge collected by the facility.

(2) The additional tax must, in accordance with the provisions of 15-1-501(6), be deposited to the credit of the state general fund.

History: **En. Sec. 15, Ch. 15, Sp. L. July 1992; amd. Sec. 17, Ch. 455, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 455 in (2) inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Applicability — Termination: Section 39(7), Ch. 15, Sp. L. July 1992, provided that this section applies to tax liabilities for calendar quarters beginning after September 30, 1992, and before October 1, 1993. This section terminates upon receipt of taxes for the quarter ending September 30, 1993.

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RESERVED

CHAPTER 70

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15-70-362. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases.
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15-70-501. Short title.
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15-70-521. Denaturing alcohol — refund authorized.
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15-70-524 through 15-70-526 reserved.
15-70-527. Penalty for failure to file.

Chapter Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Local option motor fuel tax, Title 7, ch. 14, part 3.

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

Part 1
General Provisions

15-70-101. Disposition of funds. All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501(6), be placed in the state special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, and counties in this section must, in accordance with the provisions of 15-1-501(6), be paid by the department of transportation from the state special revenue fund to the cities, towns, and counties.

(1) $16,766,000 of the funds collected under this chapter, except those collected by a justice's court, must be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (1)(a) through (1)(c):

(a) $54,000 must be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman;

(b) $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(c) $10,389,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds allocated by this section to counties, cities, and towns must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the federal-aid primary or secondary highway system or urban extensions to those systems, except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(3) All funds allocated by this section to counties, cities, and towns must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(4) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined by the last preceding official federal census.

(5) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, and counties to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(6) Except by a town or third-class city as provided in subsection (2), the funds authorized by this section may not be used for the purchase of capital equipment.

(7) Funds authorized by this section must be used for construction and maintenance programs only.

History: En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963; amd. Sec. 2, Ch. 6, Ex. L. 1967; amd. Sec. 2, Ch. 355, L. 1969; amd. Sec. 1, Ch. 384, L. 1971; amd. Sec. 1, Ch. 338, L. 1973; amd. Sec. 1, Ch. 330, L. 1974; amd. Sec. 2, Ch. 514, L. 1975; amd. Sec. 3, Ch. 34, L. 1977; R.C.M. 1947, 84-1840; amd. Sec. 4, Ch. 632, L. 1979; amd. Sec. 2, Ch. 238, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 624, L. 1983; amd. Sec. 1, Ch. 257, L. 1985; amd. Sec. 12, Ch. 703, L. 1985; amd. Sec. 1, Ch. 292, L. 1987; amd. Sec. 11, Ch. 557, L. 1987; amd. Sec. 1, Ch. 82, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 18, Ch. 455, L. 1993; amd. Sec. 1, Ch. 605, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 455 in first sentence of introductory clause, after "must", substituted "in accordance with the provisions of 15-1-501(6), be placed" for "be turned over promptly to the state treasurer, who shall place the money" and in second sentence, after "must", inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 605 in (1), at beginning, substituted "$16,766,000" for "$14,000,000" and near beginning, after "justice's court", deleted "is statutorily appropriated, as provided in 17-7-502, to the department of transportation and"; and in (1)(c), at beginning, substituted "$10,389,000" for "$7,623,000". Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Classification of municipalities, 7-1-4111.

Disposition of funds appropriated for public transportation, 7-14-102.

Disposition of gasoline and vehicle fuels taxes, 15-70-101.

Allocation of 1 cent per gallon of aviation fuel tax to Department of Transportation, 15-70-204, 67-1-301.

Gasoline tax net proceeds pledged to payment of general obligation highway bonds, 17-5-507.

Distribution of funds allocated to Department of Transportation, 60-3-201.

Allocation of portion of tax to fund highway system maintenance, 60-3-202.

15-70-102. Allocation of funds — participation in railroad grade crossing protection. (1) The sum of $100,000 may be allocated from the state special revenue fund, state highway account, for the fiscal year ending June 30, 1973, and so much for each succeeding fiscal year as may be necessary to reimburse the fund for expenditures and commitments made and to maintain the fund at $100,000 at the beginning of each fiscal year thereafter, for participation by the department of transportation with railroads in construction of railroad grade crossing protection on any public highway or road except those designated on the interstate, primary, or urban systems within the state. The department of transportation shall select those grade crossings in the state which, in the opinion of the department, are most in need of additional crossing protection and shall finance the cost thereof solely from this fund.

(2) Signal protection provided under the fund shall be limited to electric or automatic flashing lights or gates, depending on the amount and nature of the hazards present at the crossing, and participation in construction of such signals shall be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on federal-aid roads within the state, provided, however, the fund shall not be used for protection of grade crossings on the secondary system where the protection is considered necessary and the cost thereof is financed in part with federal-aid highway funds.

(3) In addition to the funds allocated, counties and cities may authorize the use of funds available to said counties and cities under the provisions of 15-70-101 for participation of installation in grade crossing protection within the county or city.

History: En. 84-1840.1 by Sec. 1, Ch. 399, L. 1973; R.C.M. 1947, 84-1840.1; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

15-70-103. Time of mailing and filing. (1) Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail shall be deemed filed and received by this state on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance, or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within 30 days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

(2) If any claim, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States post office of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was mailed to the addressee, and the date of registration, certification, or certificate shall be deemed the postmarked date.

(3) If the date for filing any claim, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if done on the next business day. Such reports shall be considered filed or received on the date or as provided in this chapter.

History: Ap. p. Sec. 12, Ch. 369, L. 1969; Sec. 84-1856, R.C.M. 1947; Ap. p. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258,

L. 1977; amd. Sec. 1, Ch. 377, L. 1977; Sec. 84-1835, R.C.M. 1947; R.C.M. 1947, 84-1835(part (a)), 84-1856.

Cross-References

Penalty for failure to file within prescribed time, 15-70-330.

15-70-104. Rules to be established by department. (1) The department of transportation shall have the power and it shall be its duty to adopt, publish, and enforce the rules consistent with and necessary for carrying out the provisions of this chapter.

(2) The department may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of:

(a) part 3; and

(b) the International Fuel Tax Agreement authorized by 15-70-121.

History: (1)En. Sec. 17, Ch. 369, L. 1969; amd. Sec. 100, Ch. 516, L. 1973; Sec. 84-1861, R.C.M. 1947; (2)En. Sec. 9, Ch. 162, L. 1955; amd. Sec. 1, Ch. 106, L. 1967; amd. Sec. 85, Ch. 516, L. 1973; amd. Sec. 2, Ch. 34, L. 1977; Sec. 84-1838, R.C.M. 1947; R.C.M. 1947, 84-1838(part), 84-1861; amd. Sec. 3, Ch. 111, L. 1989; amd. Sec. 8, Ch. 512, L. 1991.

15-70-105. Writeoff of collection of tax, penalty, or interest — rules. (1) (a) The department of transportation may write off the collection of any tax, penalty, or interest due to the state under this chapter whenever the department determines that it is not cost-effective for the department to attempt to collect the tax, penalty, or interest.

(b) The department shall establish procedures to determine the cost-effectiveness of collecting the tax, penalty, or interest.

(c) If the department writes off the collection of any tax, penalty, or interest, the department shall place in the taxpayer's file a written justification for the writeoff that includes a determination that attempted collection is not cost-effective.

(2) The department shall adopt rules to establish the procedures to carry out the purposes of this section.

History: En. Sec. 3, Ch. 428, L. 1993.

Compiler's Comments

Applicability: Section 5, Ch. 428, L. 1993, provided: "[This act] applies to sales of gasoline and special fuels on or after [the effective date of this act] and to taxes due on those sales." Effective July 1, 1993.

Effective Date: Section 6, Ch. 428, L. 1993, provided: "[This act] is effective July 1, 1993."

15-70-106 through 15-70-110 reserved.

15-70-111. Judicial review and appeals. Any final written determination by the director of the department of transportation under this chapter may be appealed to the state tax appeal board which may, upon the record of a hearing, affirm, modify, or reverse the decision of the department. Any party aggrieved by the decision of the board may petition for judicial review by the district court of Lewis and Clark County, and an appeal may be taken from the judgment of the district court to the supreme court.

History: En. Sec. 12, Ch. 162, L. 1955; amd. Sec. 86, Ch. 516, L. 1973; amd. Sec. 5, Ch. 155, L. 1977; R.C.M. 1947, 84-1841; amd. Sec. 8, Ch. 512, L. 1991.

Cross-References

State Tax Appeal Board, Title 15, ch. 2.

Judicial review of contested cases, 15-2-303.

15-70-112 through 15-70-120 reserved.

15-70-121. International Fuel Tax Agreement. (1) The department of transportation may enter into the International Fuel Tax Agreement for audits, exchange of information, and collection and distribution of motor fuel taxes pertaining to users of motor fuel in fleets of motor vehicles operated or intended to operate across jurisdictional boundaries. The International Fuel Tax Agreement is not effective unless it is in writing and is signed by the department and the department has adopted rules implementing the agreement.

(2) The agreement may determine:

(a) the base jurisdiction for motor fuel users;

(b) motor fuel user records requirements;

(c) audit procedures;

(d) procedures for the exchange of information;

(e) persons eligible for tax licensing;

(f) the definition of qualified motor vehicles;

(g) bonding requirements;

(h) reporting requirements and periods;

(i) uniform penalty and interest rates for late reporting or payment of taxes;

(j) methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction; and

(k) other provisions to facilitate the administration of the agreement.

(3) The department may, as required by the terms of the agreement, forward to officers of another jurisdiction any information in its possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuel. The department may disclose to officers of another jurisdiction the location of offices, motor vehicles, and other real and personal property of users of motor fuel.

(4) The agreement may provide each jurisdiction authority to audit the records of persons based in the jurisdiction to determine if the motor fuel taxes due each jurisdiction are properly reported and paid. Each jurisdiction shall forward the findings of the audits performed on persons based in the jurisdiction to each jurisdiction in which the person has taxable use of motor fuel. For a person not based in Montana who has taxable use of motor fuel in Montana, the department may serve the audit findings received from another jurisdiction in the form of an assessment on the person, as though an audit was conducted by the department.

(5) The agreement entered into pursuant to this section does not preclude the department from auditing the records of any person covered by the provisions of this chapter.

(6) If the specific requirements of the agreement, as the agreement reads on the effective date of adoption by the department, differ from the general provisions of this chapter or other rules promulgated by the department, the rules implementing the cooperative agreement prevail.

(7) The legal remedies for a person served with an order or assessment under this section are as prescribed in this chapter.

(8) As used in this section:

(a) "agreement" means the International Fuel Tax Agreement provided for in this section; and

(b) "motor fuel" means gasoline as defined in 15-70-201 and special fuel as defined in 15-70-301.

History: En. Secs. 1, 2, Ch. 111, L. 1989; amd. Sec. 8, Ch. 512, L. 1991.

15-70-122. Collection of fuel tax. The department of transportation may establish procedures under the International Fuel Tax Agreement to provide for the billing, collection, and administration of fuel taxes for those owners who proportionally register their fleet vehicles through the department under 61-3-711 through 61-3-733.

History: En. Sec. 5, Ch. 111, L. 1989; amd. Secs. 3, 8, Ch. 512, L. 1991.

15-70-123. Report by unlicensed petroleum dealer — definition — penalty. (1) The department of transportation may require a petroleum dealer who is not licensed by the department under Title 15, chapter 70 or 71, to file, within 30 days of the end of a quarter, on a form prescribed by the department a report of the amount of fuel received and sold during the quarter. The report must also contain other information as required by the department.

(2) As used in this section, "petroleum dealer" means a dealer who:

(a) is directly or indirectly engaged in delivering or distributing gasoline, aviation gasoline, special fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) to a consumer in this state; or

(b) offers or advertises to sell, refine, manufacture, or store gasoline, aviation gasoline, special fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) in this state.

(3) A petroleum dealer who fails to file the report required by subsection (1) shall be fined $50 for the first offense, $75 for the second offense, and $100 for the third and each subsequent offense.

History: En. Sec. 1, Ch. 34, L. 1993.

Compiler's Comments

Effective Date: Section 3, Ch. 34, L. 1993, provided: "[This act] is effective on passage and approval." Approved February 10, 1993.

15-70-124. Agreements with other governmental entities relating to collection of certain fuel taxes. (1) The department of transportation may enter into agreements relating to the administration and taxation of gasoline, special fuels, and liquefied petroleum gas with state agencies of this state and other states, agencies of the federal government, and agencies of foreign governments and provinces.

(2) The agreements may cover audits, exchange of information, licensure of sellers and users, distribution, and other matters that the department considers necessary for the administration of the taxation of gasoline, special fuels, and liquefied petroleum gas. In an agreement, the department may not delegate powers to another governmental entity that involve levying fines, forfeitures, or penalties or that allow the other governmental entity to revoke or otherwise impair a license or permit issued by the department.

History: En. Sec. 1, Ch. 438, L. 1993.

Compiler's Comments

Effective Date: Section 2, Ch. 438, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 21, 1993.

Part 2

Basic Gasoline License Tax

Part Cross-References

Local option motor fuel tax, Title 7, ch. 14, part 3.

15-70-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) any person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) any person who imports gasoline for sale, use, or distribution;

(c) any person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) any exporter as defined in subsection (8);

(e) any dealer licensed as of January 1, 1969, except a dealer at an established airport;

(f) any person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" includes and means to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of any gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(12) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(13) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(14) "Use" includes and means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state.

History: En. Sec. 2, Ch. 369, L. 1969; amd. Sec. 1, Ch. 13, L. 1971; amd. Sec. 1, Ch. 204, L. 1971; R.C.M. 1947, 84-1846; amd. Sec. 1, Ch. 576, L. 1979; amd. Sec. 1, Ch. 627, L. 1979; amd. Sec. 1, Ch. 514, L. 1983; amd. Sec. 1, Ch. 697, L. 1985; amd. Sec. 4, Ch. 220, L. 1987; amd. Sec. 1, Ch. 8, L. 1989; amd. Sec. 1, Ch. 231, L. 1993; amd. Sec. 1, Ch. 642, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 231 inserted definition of importer. Chapter 642 in definitions of aviation dealer, aviation fuel, and gasoline substituted "fuel" for "gasoline"; and made minor changes in style. Amendment effective July 1, 1993.

15-70-202. License, fee, and security of gasoline distributors. (1) All gasoline distributors, including exporters, as defined in 15-70-201, and a person who imports, as defined in 15-70-201, prior to the commencement of doing business, shall file an application for a license with the department of transportation on forms prescribed and furnished by the department setting forth the information as may be requested by the department. Each distributor shall at the same time file security with the department in an amount to be determined by the department. However, the required amount of security may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) Any person who engages in the wholesale distribution of gasoline in this state exercising the option under 15-70-201(6)(c) shall pay an annual license fee of $200.

(3) "Security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under conditions as the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

History: En. Sec. 13, Ch. 369, L. 1969; amd. Sec. 98, Ch. 516, L. 1973; R.C.M. 1947, 84-1857; amd. Sec. 1, Ch. 609, L. 1979; amd. Sec. 2, Ch. 514, L. 1983; amd. Sec. 2, Ch. 8, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 2, Ch. 231, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 231 in (1), near beginning, deleted reference to subsection (8) of 15-70-201 and inserted "and a person who imports, as defined in 15-70-201"; at end of (2) deleted "and upon renewal of the license shall pay an annual fee of $200"; and made minor changes in style.

15-70-203. License to sell gasoline on which refund may be claimed. (1) Any person other than a licensed distributor shall obtain a license from the department of transportation prior to selling gasoline on which a refund may be claimed. The application for license shall contain the applicant's name, address, place or places of business in the state of Montana, and other information which may be required by the department. Licenses issued shall bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. A nontransferable license shall be issued and be effective until canceled or suspended by the department.

(2) Any person failing to comply with this section shall be subject to a fine of not less than $25 or more than $200 or imprisonment in the county jail for a period not less than 10 days or more than 60 days or both fine and imprisonment.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(6); amd. Sec. 1, Ch. 205, L. 1989; amd. Sec. 8, Ch. 512, L. 1991.

15-70-204. *(Temporary)* **Gasoline license tax — rate.** (1) Every distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 3 cents for each gallon of aviation fuel, which is allocated to the department of transportation as provided by 67-1-301; and

(b) for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor:

(i) 24 cents per gallon beginning July 1, 1993; and

(ii) 27 cents per gallon beginning July 1, 1994.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).

15-70-204. *(Effective on occurrence of contingency)* **Gasoline license tax — rate.** (1) Every distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 2 cents for each gallon of aviation fuel, which is allocated to the department of transportation as provided by 67-1-301; and

(b) for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor:

(i) 24 cents per gallon beginning July 1, 1993; and

(ii) 27 cents per gallon beginning July 1, 1994.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).

History: En. Sec. 3, Ch. 369, L. 1969; amd. Sec. 1, Ch. 202, L. 1971; amd. Sec. 2, Ch. 204, L. 1971; amd. Sec. 90, Ch. 516, L. 1973; amd. Sec. 3, Ch. 514, L. 1975; amd. Sec. 5, Ch. 390, L. 1977; R.C.M. 1947, 84-1847; amd. Sec. 2, Ch. 576, L. 1979; amd. Sec. 2, Ch. 632, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 624, L. 1983; amd. Sec. 12, Ch. 649, L. 1983; amd. Sec. 1, Ch. 20, Sp. L. June 1986; amd. Sec. 1, Ch. 30, L. 1987; amd. Sec. 3, Ch. 8, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 3, Ch. 231, L. 1993; amd. Sec. 2, Ch. 605, L. 1993; amd. Secs. 2, 3, Ch. 642, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 231 at end of (2) inserted "unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for"; and made minor changes in style.

Chapter 605 in (1)(b) increased tax from 20 cents a gallon to 24 cents a gallon beginning July 1, 1993, and to 27 cents a gallon beginning July 1, 1994; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 642 in (1) increased tax from 1 cent a gallon to 3 cents a gallon and substituted "fuel" for "gasoline", effective July 1, 1993, and decreased tax to 2 cents a gallon on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million; and made minor changes in style.

Cross-References

Refund authorized, 15-70-521.

Tax incentive for production of alcohol, 15-70-522.

Gasoline tax net proceeds pledged to payment of general obligation highway bonds, 17-5-507.

Allocation of portion of tax to fund highway system maintenance, 60-3-202.

15-70-205. *(Temporary)* **Distributor's statement and payment — confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, render a true signed statement to the department of transportation of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by the distributor; however, an allowance may not be deducted from the 3-cent tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section may not be construed to prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction. *(Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)*

15-70-205. *(Effective on occurence of contingency)* **Distributor's statement and payment — confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, render a true signed statement to the department of transportation of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by the distributor; however, an allowance may not be deducted from the 2-cent tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section may not be construed to prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

History: En. Sec. 5, Ch. 369, L. 1969; amd. Sec. 4, Ch. 204, L. 1971; amd. Sec. 91, Ch. 516, L. 1973; R.C.M. 1947, 84-1849; amd. Sec. 1, Ch. 565, L. 1987; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 1, Ch. 521, L. 1991; amd. Secs. 4, 5, Ch. 642, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 642 in (1), near end, substituted "3-cent" for "1-cent" and substituted "fuel" for "gasoline", effective July 1, 1993, and provided that the allowance may not be deducted from the 2-cent tax on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million; and made minor changes in style.

15-70-206. Recordkeeping requirements. Each distributor or any other person dealing in, transporting, receiving, or storing gasoline shall keep for a period not to exceed 3 years such records, receipts, and invoices and any other pertinent papers and information as the department of transportation may require.

History: En. Sec. 7, Ch. 369, L. 1969; amd. Sec. 5, Ch. 204, L. 1971; amd. Sec. 93, Ch. 516, L. 1973; R.C.M. 1947, 84-1851; amd. Sec. 8, Ch. 512, L. 1991.

15-70-207. Invoice of distributors and aviation dealers. Each distributor and aviation dealer in this state shall at the time of delivery, except where authorized by the department of transportation, issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the department may require.

History: En. Sec. 9, Ch. 369, L. 1969; amd. Sec. 6, Ch. 204, L. 1971; amd. Sec. 95, Ch. 516, L. 1973; R.C.M. 1947, 84-1853; amd. Sec. 8, Ch. 512, L. 1991.

15-70-208. Examination of records. (1) The department of transportation or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this part and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all license taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting, or storing gasoline must be open and subject to inspection by the department or any of its employees or assistants during business hours in order to ascertain the amount of license tax due.

History: En. Secs. 6, 8, Ch. 369, L. 1969; amd. Secs. 92, 94, Ch. 516, L. 1973; R.C.M. 1947, 84-1850, 84-1852; amd. Sec. 30, Ch. 581, L. 1979; amd. Sec. 1, Ch. 16, L. 1983; amd. Sec. 8, Ch. 512, L. 1991.

15-70-209. Information reports — confidentiality. (1) A person receiving gasoline, including every exporter, importer, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships gasoline from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of $25 for each failure or refusal. If a person establishes to the satisfaction of the department that the failure to file a statement as prescribed by the department was due to reasonable cause, the department shall waive the penalty.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. Nothing in this section may be construed to prohibit:

(a) the delivery to a person or the person's authorized representative of a certified copy of any report filed under subsection (1);

(b) the inspection by the attorney general or other legal representative of the state of the report or statement of a person if a person or distributor brings an action to set aside or review the tax based on the report or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

(c) the publication of statistics classified to prevent the identification of particular reports or statements and the items in the reports or statements;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on motor fuels or the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or a representative of the officer only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

History: En. Sec. 10, Ch. 369, L. 1969; amd. Sec. 96, Ch. 516, L. 1973; R.C.M. 1947, 84-1854; amd. Sec. 4, Ch. 8, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 2, Ch. 521, L. 1991; amd. Sec. 4, Ch. 231, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 231 in (1), near beginning after "exporter", inserted "importer"; and made minor changes in style.

15-70-210. Tax penalty for delinquency. (1) Any license tax not paid within the time provided shall be delinquent, and a penalty of 10% shall be added to the tax and the tax shall bear interest at the rate of 1% per month from the date of delinquency until paid. Upon a showing of good cause by the distributor, the department of transportation may waive penalty.

(2) If any distributor or other person subject to the payment of such license tax shall willfully fail, neglect, or refuse to make any statement required by this part or shall willfully fail to make payment of such license tax within the time provided, the department shall be authorized to revoke any license issued under this part.

(3) In addition, the department shall inform itself regarding the matters required to be in such statement and determine the amount of the license tax due the state from such distributor and shall add thereto a penalty of $25 or 10% thereof, whichever is greater, together with interest at the rate of 1% per month from the date such statements should have been made and said license tax paid.

(4) The state treasurer shall proceed to collect such license tax, with penalties and interest. Upon the request of the state treasurer, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax.

History: En. Sec. 14, Ch. 369, L. 1969; amd. Sec. 99, Ch. 516, L. 1973; R.C.M. 1947, 84-1858(part); amd. Sec. 8, Ch. 512, L. 1991.

15-70-211. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department of transportation may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded thereafter. No action may be maintained to enjoin the collection of all or any part of the license tax.

History: En. Sec. 14, Ch. 369, L. 1969; amd. Sec. 99, Ch. 516, L. 1973; R.C.M. 1947, 84-1858(part); amd. Sec. 38, Ch. 439, L. 1981; amd. Sec. 8, Ch. 512, L. 1991.

15-70-212. Statute of limitations. Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency shall be assessed within 3 years from the due date of the return or the date of filing the return, whichever period expires later.

History: En. Sec. 16, Ch. 369, L. 1969; R.C.M. 1947, 84-1860.

15-70-213 through 15-70-220 reserved.

15-70-221. *(Temporary)* **Refund or credit authorized.** (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, for operating or propelling stationary gasoline engines or tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5) or (6), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund will be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid.

(6) A Montana refinery or distributor who sells JP-4 or JP-8 jet fuel to the federal defense fuel supply center is entitled to a credit or refund of 2 cents a gallon for each gallon that is sold to the supply center and on which the

gasoline license tax has been paid. *(Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)*

15-70-221. *(Effective on occurrence of contingency)* **Refund or credit authorized.** (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, for operating or propelling stationary gasoline engines or tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5) or (6), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax so paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund will be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 1 cent on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid.

(6) A Montana refinery or distributor who sells JP-4 or JP-8 jet fuel to the federal defense fuel supply center is entitled to a credit or refund of 1 cent a gallon for each gallon that is sold to the supply center and on which the gasoline license tax has been paid.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(1); amd. Sec. 2, Ch. 627, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 13, Ch. 649, L. 1983; amd. Sec. 5, Ch. 8, L. 1989; amd. Sec. 1, Ch. 562, L. 1989; amd. Sec. 5, Ch. 231, L. 1993; amd. Sec. 1, Ch. 428, L. 1993; amd. Secs. 6, 7, Ch. 642, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 231 in (1), at beginning of second sentence, substituted "The refund may not" for "Such refund or drawback should in no instance"; in (4), at end of first sentence, inserted "unless the person is not licensed and is not paying the tax to the state the fuel is destined for" and at beginning of second sentence inserted "The credit or refund will be made upon"; and made minor changes in style.

Chapter 428 in (1), near beginning of second sentence after "refund", deleted "or drawback"; in (3)(a), near beginning of first sentence after "gasoline", inserted "with a tax liability of $200 or greater" and at end, after "purchaser", inserted "and for which the distributor has not forgiven any liability" and in second sentence substituted "may not" for "shall", after "worthless" inserted "more than once during a 3-year period", and after "and" inserted "the distributor must have"; in (3)(b), after "due", inserted "must be prorated"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 642 in (1), near beginning of second sentence after "refund", deleted "or drawback" and at beginning of last sentence inserted exception clause and substituted "fuel" for "gasoline", effective July 1, 1993; inserted (5) allowing certain air carriers a 2-cent-per-gallon refund and (6) allowing certain refineries and distributors a 2-cent-per-gallon credit or refund, effective July 1, 1993, and reducing the refund to a 1-cent refund on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million; and made minor changes in style.

Applicability: Section 5, Ch. 428, L. 1993, provided: "[This act] applies to sales of gasoline and special fuels on or after [the effective date of this act] and to taxes due on those sales." Effective July 1, 1993.

Cross-References

Refund authorized, 15-70-521.

Tax incentive for production of alcohol, 15-70-522.

Use of money credited to state park account for refunds, 60-3-201.

15-70-222. Required records. (1) Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which used. Gasoline on hand, determined by actual measurement, shall be deducted from a claim and shall be reported as an opening inventory on the next claim.

(2) If separate storage tanks are maintained on claimant's premises for use in licensed vehicles and in unlicensed equipment, the bulk delivery invoices shall be so marked by the dealer at the time of delivery. No further record is required, provided refunds are claimed only on the number of gallons delivered into the unlicensed equipment tank. Withdrawal of gasoline from the unlicensed vehicle tank for licensed vehicles will invalidate this method of determining refundable gallonage.

(3) Special storage facilities used for certain periods must be identified and explained. If such storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into such storage.

(4) Service stations, bulk dealers, and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for their own use upon which a refund is to be claimed.

(5) When no highway use of gasoline is deducted from the claim, the applicant must substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department of transportation.

(6) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership if such person has maintained the following records:

(a) the total number of miles traveled on and off public roads by each licensed vehicle;

(b) total gallons of gasoline used in each vehicle;

(c) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources.

(7) An exporter or any other person who transports gasoline out of Montana for sale, use, or consumption outside of Montana shall maintain detailed and contemporaneous records of withdrawal, transportation, ownership, and delivery of the gasoline to destinations outside of Montana as required by the department of transportation.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 3, Ch. 627, L. 1979; amd. Sec. 6, Ch. 8, L. 1989; amd. Sec. 8, Ch. 512, L. 1991.

15-70-223. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases. (1) An applicant whose use qualifies as agricultural use may apply for a refund of 60% of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use. To ensure that the applicant's use qualifies as agricultural use, the department of transportation may request from the department of revenue information on the ratio of the applicant's gross farm income to total gross income, provided that the department of transportation gives notice to the applicant.

(2) For purposes of application for a refund under subsection (1), the department shall accept, as evidence of keylock or cardtrol purchases, a statement of the sale of gasoline with applicable tax that identifies the purchaser and that is signed by a licensed distributor or a person licensed under 15-70-203 from whom the gasoline was purchased.

(3) If any invoice or evidence is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the department of transportation.

(4) An applicant whose use does not qualify as agricultural use may not estimate and must maintain records as required by 15-70-222.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 4, Ch. 627, L. 1979; amd. Sec. 1, Ch. 356, L. 1989; amd. Sec. 1, Ch. 67, L. 1991; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 2, Ch. 245, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 245 inserted second sentence in (1) allowing Department of Transportation to request certain income information to determine whether gasoline use qualifies as agricultural use, subject to notice to the applicant. Amendment effective April 1, 1993.

Effective Date — Applicability: Section 3, Ch. 245, L. 1993, provided: "[This act] is effective on passage and approval and applies to claims for refunds filed on or after [the effective date of this act]." Effective April 1, 1993.

15-70-224. Determination of highway use. Highway use for each vehicle is determined by dividing the average miles per gallon rate into the number of miles traveled on public roads.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 5, Ch. 627, L. 1979.

15-70-225. Application for refund or credit — filing — correction by department. (1) The application for refund is a signed statement, on a form furnished by the department of transportation. Except for a claim for a credit of taxes paid on unpaid accounts, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery, showing the total amount of gasoline purchased or aviation fuel purchased by a certified scheduled passenger air carrier, the total amount of gasoline or aviation fuel on which a refund is claimed, and the amount of the tax claimed for refund.

(2) A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(3) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery under 15-70-201 is not valid for refund purposes.

(4) All applications for refunds must be filed with the department within 14 months after the date on which the gasoline or aviation fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(5) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 6, Ch. 627, L. 1979; amd. Sec. 2, Ch. 562, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 8, Ch. 642, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 642 in (1), near end after "purchased", inserted "or aviation fuel purchased by a certified scheduled passenger air carrier" and after "gasoline" inserted "or aviation fuel"; in (4) inserted "or aviation fuel"; and made minor changes in style. Amendment effective July 1, 1993.

15-70-226. Approval or rejection of claim. (1) The department shall have 120 days after receiving the claim to approve or reject it. If approved, the department of transportation shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor; for all other persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject such claim in full. If a

claim is rejected, the department may suspend claimant's right to refund for a period not to exceed 1 year.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974; R.C.M. 1947, 84-1855(part); amd. Sec. 7, Ch. 627, L. 1979; amd. Sec. 8, Ch. 512, L. 1991.

15-70-227 through 15-70-230 reserved.

15-70-231. Unlawful use of aviation fuel. It is unlawful for any person to use aviation fuel or to sell aviation fuel for use in any motorized vehicle operated upon the public highways or streets of this state. Violation of this section is a misdemeanor subject to the penalties provided in 15-70-232.

History: En. 84-1855.1 by Sec. 8, Ch. 204, L. 1971; R.C.M. 1947, 84-1855.1; amd. Sec. 9, Ch. 642, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 642 in first sentence, in two places, substituted "fuel" for "gasoline"; and made minor changes in style. Amendment effective July 1, 1993.

15-70-232. Penalties. Any distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided or who shall be delinquent in the payment of any license tax imposed by this part or who shall make any false statement with reference to his business or who shall make any false statement on any claim for refund or who violates any provision of the part shall, in addition to any other penalties imposed, be deemed guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding $1,000 or imprisoned in the county jail for not to exceed 6 months or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 15, Ch. 369, L. 1969; R.C.M. 1947, 84-1859.

Cross-References

Applicable to violations of provisions of local option motor fuels tax, 7-14-304.

15-70-233 reserved.

15-70-234. Cooperative agreement — motor fuels taxes. In order to prevent the possibility of dual taxation of motor fuels purchased by Montana citizens and businesses on Indian reservations, the department of transportation and an Indian tribe may enter into a cooperative agreement. The department of transportation may, with the concurrence of the attorney general, include as a member of the negotiating team a representative of the department of justice who has expertise in Indian matters. The department of transportation shall report the status of cooperative agreement negotiations to each meeting of the revenue oversight committee. After negotiations are complete, the agreement must be presented to the revenue oversight committee for review and comment before the final agreement is submitted to the attorney general for approval pursuant to 18-11-105.

History: En. Sec. 1, Ch. 772, L. 1991; amd. Sec. 5, Ch. 772, L. 1991; amd. Sec. 5, Ch. 625, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 625 at end, after "approval", inserted "pursuant to 18-11-105" and deleted last two sentences of former (1) specifying level of taxation to be addressed in agreement and that agreement provide for nonwaiver of rights (see 1993 Session Law for text); deleted (2) authorizing agreement to prohibit dual taxation of distributor (see 1993 Session Law for text);

deleted (3) and (4) authorizing agreement to provide for distribution of tax (see 1993 Session Law for text); and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

15-70-235. Tribal motor fuels administration account. (1) There is a special revenue account called the tribal motor fuels administration account.

(2) The administrative expenses and refund amounts deducted by the department of transportation under 15-70-234(3) must be deposited in the tribal motor fuels administration account.

(3) The tribal motor fuels administration account may be expended by the department of transportation only for the purposes of administering the motor fuels tax and providing refunds under 15-70-234.

History: En. Sec. 2, Ch. 772, L. 1991; amd. Sec. 5, Ch. 772, L. 1991.

15-70-236. Tribal motor fuels tax account. (1) There is a special revenue account called the tribal motor fuels tax account.

(2) The tax collected under 15-70-234, except the administrative expenses and refund amounts deducted under 15-70-234(3), must be deposited in the tribal motor fuels tax account.

(3) The money in the tribal motor fuels tax account must be disbursed to the tribe, as provided for in the agreement entered into pursuant to 15-70-234, on a quarterly basis.

History: En. Sec. 3, Ch. 772, L. 1991.

15-70-237 through 15-70-240 reserved.

15-70-241. Terminated. Section 39(5), Ch. 15, Sp. L. July 1992.

History: En. Sec. 16, Ch. 15, Sp. L. July 1992.

Part 3

Special Fuels Use Tax

15-70-301. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person whose major endeavor is and primary source of earned income is from the business of farming or ranching.

(2) "Authorization" means an uncanceled special fuel tax prepaid authorization issued by the department.

(3) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(4) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(5) "Cardtrol" or "keylock" means any unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(6) "Department" means the department of transportation.

(7) (a) "Distributed" means, at the time special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(8) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter as defined in this section.

(9) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(10) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(11) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana.

(17) "Special fuel dealer" means:

(a) any person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) any person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) any person who provides any facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.

History: En. Sec. 2, Ch. 162, L. 1955; amd. Sec. 3, Ch. 247, L. 1959; amd. Sec. 1, Ch. 66, L. 1963; amd. Sec. 7, Ch. 70, L. 1963; amd. Sec. 12-106, Ch. 197, L. 1965; amd. Sec. 79, Ch. 516, L. 1973; amd. Sec. 1, Ch. 473, L. 1975; R.C.M. 1947, 84-1831; amd. Sec. 1, Ch. 350, L. 1979; amd. Sec. 2, Ch. 609, L. 1979; amd. Sec. 1, Ch. 321, L. 1985; amd. Sec. 1, Ch. 220, L. 1987; amd. Sec. 1, Ch. 547, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 1, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 inserted definitions of agricultural use, bulk delivery, distributed, distributor, export, exporter, import, and importer; in definition of bond, in (a), near beginning after "executed by a", deleted "special fuel dealer or" and near end, after "obligations of the", deleted "special fuel dealer or" and in (b), after "department by the", deleted "special fuel dealer or"; substituted definition of motor vehicle for former definition that read: "any vehicle which is self-propelled upon the highways"; in definition of special fuel, near end, substituted "operating" for "propelled" and deleted last sentence that read: "The term includes compressed natural gas"; in definition of special fuel dealer deleted former (b) that read: "(b) For the purposes of subsection (9)(a), the term "fuel supply tank or tanks" does not include cargo tanks, even though fuel is withdrawn directly from cargo tanks for propulsion of the vehicle"; in definition of special fuel user, near end, substituted "operation" for "propulsion"; in definition of use, at beginning, inserted "when the term relates to a special fuel user", deleted (a) that read: "(a) the receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state", and near end substituted "the operation" for "propulsion"; and made minor changes in style. Amendment effective January 1, 1994.

Cross-References

Special fuels excluded from definition of "gasoline", 15-70-201.

Definition of "school district", 20-15-403.

15-70-302. Special fuel user's permits required — exceptions. (1) A special fuel user shall obtain annually from the department, prior to the use of special fuel for the operation of a motor vehicle or vehicles in this state, a special fuel user's permit. Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit as required by subsection (1) if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement as authorized by 15-70-121 and the vehicle displays a license or decal issued pursuant to the agreement.

(4) A person whose use of special fuel is in special fuel vehicles up to 26,000 pounds gross vehicle weight or registered gross vehicle weight shall obtain annually from the department an authorization, as provided in 15-70-309, if the special fuel is not subject to taxation under 15-70-343.

History: **En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(a); amd. Sec. 1, Ch. 599, L. 1979; amd. Sec. 1, Ch. 222, L. 1985; amd. Sec. 4, Ch. 111, L. 1989; amd. Sec. 2, Ch. 547, L. 1989; amd. Sec. 1, Ch. 157, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 525, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 525 deleted former (1) that read: "(1) A person may not act as a special fuel dealer in this state unless the person is the holder of an uncanceled fuel dealer's license issued to him by the department"; in (1), near middle of first sentence, substituted "operation" for "propulsion", near beginning of second sentence substituted "subsection (3)" for "subsection (5)", and in third sentence substituted "motor carrier services division employee" for "checking station officer"; deleted former (3) exempting certain vehicles from special fuel user's permit requirement (see 1993 Session Law for text); in (3) substituted "subsection (1)" for "subsection (2)"; deleted former (5)(b) that required the vehicle to be part of a Montana-based fleet (see 1993 Session Law for text); deleted former (5)(c) that required motor vehicle registration card (see 1993 Session Law for text); deleted former (5)(d) requiring that card be carried in vehicle; in (4), after "fuel is", substituted "in special fuel vehicles up to 26,000 pounds gross vehicle weight or registered gross vehicle weight shall" for "predominantly for agricultural and nonhighway use but who owns or operates one or more passenger cars or light trucks may" and at end inserted "if the special fuel is not subject to taxation under 15-70-343"; and made minor changes in style. Amendment effective January 1, 1994.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-303. Application for permit or authorization. (1) Application for a special fuel user's permit or authorization must be made to the department unless otherwise provided in this part.

(2) The application must be filed upon a form prepared and furnished by the department. The application must contain information the department considers necessary.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(b), (c); amd. Sec. 2, Ch. 599, L. 1979; amd. Sec. 3, Ch. 547, L. 1989; amd. Sec. 3, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 in (1), after "Application for a", deleted "special fuel dealer's license"; and made minor changes in style. Amendment effective January 1, 1994.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-304. Bonding, release of surety, and additional bond. (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) $5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) $500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and

discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(3), the department shall cancel the special fuel user's permit.

(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(3) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(d), (i), (j); amd. Sec. 3, Ch. 599, L. 1979; amd. Sec. 1, Ch. 625, L. 1979; amd. Sec. 1, Ch. 262, L. 1987; amd. Sec. 4, Ch. 547, L. 1989; amd. Sec. 1, Ch. 121, L. 1991; amd. Sec. 4, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 in (1), near beginning after "this section, a", deleted "special fuel dealer's license or" and deleted last sentence that read: "Upon application, the department shall waive the bond requirement of a public contractor licensed under Title 15, chapter 50, who has posted a performance bond conditioned on payment of all lawful taxes with the contracting entity"; in (2), near beginning after "required of a", deleted "special fuel dealer must be equivalent to twice his estimated monthly tax payments, and the total amount of the bond or bonds required of a"; deleted (2)(c) setting a bond at "$1,000 for a special fuel dealer"; in (3), in three places before "special fuel user", deleted "special fuel dealer or", substituted "15-70-301(3)" for "15-70-301(2)", and at end, after "cancel the", deleted "special fuel dealer's license or"; in (4), in four places before "special fuel user", deleted "special fuel dealer or", substituted "15-70-301(3)" for "15-70-301(2)", and at end substituted "the permit" for "his license"; and made minor changes in style. Amendment effective January 1, 1994.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-305. Issuance of permit or authorization — grounds for refusal — hearing. (1) Except as provided in subsection (4), upon receipt of the application and bond in proper form, the department shall issue to the applicant a permit to operate as a special fuel user. Each special fuel user's permit is valid until suspended or revoked for cause or otherwise canceled.

(2) Except as provided in subsection (4), upon receipt of the application in proper form, the department shall issue to the applicant an authorization. A holder of an authorization is not required to furnish bond as provided under 15-70-304. The authorization must be issued annually and is valid from the date of its issuance through December 31 of the calendar year, unless a motor vehicle for which the tax is prepaid is sold, or until suspended or revoked for cause or otherwise canceled.

(3) If the special fuel user's permit is surrendered or revoked, the special fuel user shall pay a reissuance fee of $100.

(4) The department may refuse to issue a special fuel user's permit or authorization to any person:

(a) who formerly held a permit or authorization that, prior to the time of filing application, has been revoked for cause;

(b) who is not the real party in interest and the permit or authorization of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) upon other sufficient cause being shown.

(5) Before refusal to issue a permit or authorization, the department shall grant the applicant a hearing and shall grant the applicant at least 10 days' written notice of the time and place of hearing.

(6) A special fuel user's permit or authorization is not transferable.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(e) thru (g); amd. Sec. 4, Ch. 599, L. 1979; amd. Sec. 5, Ch. 547, L. 1989; amd. Sec. 5, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 in (1) and (2) substituted "subsection (4)" for "subsection (3)"; in (1), near middle of first sentence after "the applicant a", deleted "license or", after "permit to" substituted "operate" for "act", and after "operate as a" deleted "special fuel dealer or" and in second sentence, after "Each", deleted "special fuel dealer's license or"; inserted (3) concerning payment of a reissuance fee; in (4), after "to issue a", deleted "special fuel dealer's license", in (4)(a), after "held a", deleted "license"; in (4)(b), after "interest and the", deleted "license"; in (5), after "to issue a", deleted "license"; in (6), at beginning after "A", deleted "special fuel dealer's license"; and made minor changes in style. Amendment effective January 1, 1994.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-306. Revocation, suspension, and cancellation. (1) The department may revoke the permit or authorization of any special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking a permit or authorization, the department shall notify the permittee of its intention, by certified mail addressed to the permittee's last-known address shown in the files of the department, requiring the permittee to appear before the department on a day and hour specified in the notice, not more than 30 days or less than 10 days from date of notice, and show cause, if any, why the permit or authorization should not be revoked; provided, however, that at any time prior to and pending the hearing, the department may in the exercise of reasonable discretion suspend the permit or authorization.

(2) Upon revocation by the department of any permit or authorization, the holder shall immediately surrender the permit or authorization to the department for cancellation.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(part (h)); amd. Sec. 5, Ch. 599, L. 1979; amd. Sec. 6, Ch. 547, L. 1989; amd. Sec. 6, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 in (1), in first sentence near beginning after "may revoke the", deleted "license" and after "authorization of any" deleted "special fuel dealer or" and in second sentence, after "Before revoking a", deleted "license", after "shall notify the" deleted "licensee or", and near end, in two places before "permit", deleted "license"; in (2), in two places before "permit", deleted "license"; and made minor changes in style. Amendment effective January 1, 1994.

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-307. Surrender of permit upon use discontinuance. The department shall cancel any special fuel user permit immediately upon surrender by the holder.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(part (h)); amd. Sec. 6, Ch. 599, L. 1979; amd. Sec. 7, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 after "shall cancel any" deleted "license to act as a special fuel dealer or any"; and made minor changes in style. Amendment effective January 1, 1994.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-308. Temporary cash compliance bond. (1) A special fuel user subject to the licensing requirements of this part may obtain a temporary 30-day operating permit by posting a $100 cash compliance bond on each vehicle at any weigh station, or with any person authorized by the department to issue a cash compliance bond.

(2) If the user files the bond required by 15-70-304, files a special fuel tax return for the 30-day period, and otherwise complies with the requirements of this part, the $100 payment received for the temporary permit must be returned to the user. If the user fails to file the bond required by 15-70-304 or the special fuel tax return for the 30-day period or fails to comply with the requirements of this part, the $100 payment is forfeited to the state.

(3) The temporary permit is issued subject to the same restrictions and requirements as the annual permit.

History: En. Sec. 1, Ch. 78, L. 1981; amd. Sec. 3, Ch. 512, L. 1991.

15-70-309. Authorization for certain uses — disposition of proceeds — penalties. (1) (a) A person who purchases, tax-free, special fuel in bulk and who owns or operates special fuel vehicles 26,000 pounds or less gross vehicle weight or registered gross vehicle weight shall pay an authorization fee as follows:

(i) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is 10,000 pounds or less, $150;

(ii) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is over 10,000 pounds and less than 18,000 pounds, $225;

(iii) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is 18,000 pounds or more and up to 26,000 pounds, $500.

(b) The authorization fee for vehicles under 10,000 pounds gross vehicle weight or registered gross vehicle weight purchased during the calendar year must be computed at one-twelfth of the applicable fee for each month or fraction of a month. The authorization fee for vehicles 10,000 pounds or more and up to 26,000 pounds gross vehicle weight or registered gross vehicle weight must be prorated on a quarterly basis and may be paid quarterly, semiannually, or annually.

(c) Whenever the holder of an authorization ceases to operate within this state, the holder shall notify the department within 15 days after discontinuance. The holder shall surrender to the department the authorization issued to the holder by the department. The department shall refund the portion of the authorization fee attributable to the remaining portion of the applicable period.

(2) All taxes collected must be remitted to the department or deposited directly in the state special revenue fund for use by the department.

(3) A person violating any provision of subsection (1) is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $2,000 or by imprisonment for not less than 30 days or more than 6 months or by both fine and imprisonment. The fine and imprisonment provided in this subsection are in addition to any other penalty imposed by any other provision in this chapter.

History: En. Sec. 7, Ch. 547, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 8, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 in (1)(a), near beginning after "in bulk and", deleted "whose use of a special fuel is predominantly for agricultural and nonhighway use but" and after "operates" substituted remainder of subsection concerning special fuel vehicles of 26,000 pounds or less and (1)(a)(i), (1)(a)(ii), and (1)(a)(iii) concerning other special fuel vehicles for former language concerning other types of special fuel vehicles weighing 10,000 pounds or less and language requiring an annual tax on special fuel placed in bulk storage (see 1993 Session Law for text); substituted (1)(b) regarding computation of authorization fee for vehicles over and under 10,000 pounds for former (1)(b) requiring payment of tax on a yearly rate (see 1993 Session Law for text); in (1)(c), near beginning of first sentence after "ceases to", substituted "operate" for "farm" and in third sentence substituted "authorization fee" for "prepaid tax" and at end substituted "applicable period" for "calendar year"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-310 reserved.

15-70-311. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit. (1) Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a special fuel user's temporary trip permit. The permits must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(3) A resident or nonresident operating a special fuel-powered vehicle up to 26,000 pounds gross vehicle weight or registered gross vehicle weight in

this state is exempt from obtaining an authorization under 15-70-309 if the special fuel tax is paid at the time of purchase.

History: En. Sec. 1, Ch. 200, L. 1961; amd. Sec. 1, Ch. 105, L. 1967; amd. Sec. 87, Ch. 516, L. 1973; amd. Sec. 1, Ch. 440, L. 1975; R.C.M. 1947, 84-1842; amd. Sec. 2, Ch. 222, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 9, Ch. 525, L. 1993; amd. Sec. 3, Ch. 575, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 525 in (1) and (2), near beginning, inserted "over 26,000 pounds gross vehicle weight or registered gross vehicle weight" and substituted "motor carrier services division employees" for "scale house personnel, gross vehicle weight patrol crews"; in (1), near middle after "special fuel vehicle permit", deleted "or registration card indicating the special fuel use permit number"; inserted (3) concerning exemption from authorization; and made minor changes in style. Amendment effective January 1, 1994.

Chapter 575 near end of (1) and (2) substituted "motor carrier services division personnel" for "gross vehicle weight patrol crews"; and made minor changes in style. Amendment effective January 1, 1994.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-312. Fees for temporary permits — duration of temporary permits. (1) Temporary special fuel permits cost $30. The permit is valid for a period of time not to exceed 72 hours and is automatically void if the vehicle leaves the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment costs $30 per unit for the calendar year in which the fee is collected. The permit is not transferable. A unit is defined as:

(a) one truck suitable for hauling commodities;

(b) one harvesting machine; and

(c) pickup trucks and any other accessory vehicles.

(3) All fees collected must be remitted to the department or deposited directly in the state special revenue fund for the department.

History: En. Sec. 2, Ch. 200, L. 1961; amd. Sec. 88, Ch. 516, L. 1973; amd. Sec. 2, Ch. 440, L. 1975; R.C.M. 1947, 84-1843(part); amd. Sec. 1, Ch. 601, L. 1979; amd. Sec. 1, Ch. 40, L. 1981; amd. Sec. 3, Ch. 48, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 10, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 in (1), in first sentence after "cost", deleted "the special fuel vehicle user a fee of"; in (2)(a) substituted "commodities" for "produce"; and made minor changes in style. Amendment effective January 1, 1994.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-313. Department to furnish forms. Special fuel temporary permits, nonresident temporary permits, remittance forms, and any other necessary papers for the accounting and enforcement of 15-70-311 through 15-70-314 shall be furnished by the department.

History: En. Sec. 2, Ch. 200, L. 1961; amd. Sec. 88, Ch. 516, L. 1973; amd. Sec. 2, Ch. 440, L. 1975; R.C.M. 1947, 84-1843(part).

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-314. Penalty for operation without temporary permit — compliance bond — policy continued. (1) Any unlicensed user of special fuel vehicles operating within the state of Montana without making application for said temporary permit and paying the specified fee shall be guilty of committing a misdemeanor and upon conviction be fined $50.

(2) Nothing contained herein shall affect the existing policy of accepting a compliance bond to be retained for use by the department and to be imposed at the discretion of the enforcing agency.

History: En. Sec. 3, Ch. 200, L. 1961; amd. Sec. 89, Ch. 516, L. 1973; R.C.M. 1947, 84-1844.

Cross-References

Enforcement by Department of Transportation personnel, 61-12-206.

15-70-315. Affidavit required of cardtrol or keylock purchaser — inspection by department. A person who uses a cardtrol, keylock, or similar device to obtain delivery of special fuel tax-free from an unattended pump or dispensing unit shall sign and furnish to the special fuel dealer an exemption certificate, on a form prescribed and furnished by the department, stating the sale of special fuel that is not subject to taxation under 15-70-343.

History: En. Sec. 2, Ch. 220, L. 1987; amd. Sec. 11, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 near middle, after "fuel dealer an", substituted "exemption certificate" for "affidavit" and after "stating the" substituted "sale of special fuel that is not subject to taxation under 15-70-343" for "type of equipment in which the special fuel will be placed and stating that no special fuel will be placed into the supply tank of a motor vehicle to be operated on the public roads and highways of this state"; and deleted (2) that read: "(2) The special fuel dealer shall keep all such affidavits and make them available for inspection by the department". Amendment effective January 1, 1994.

15-70-316. Repealed. Sec. 44, Ch. 525, L. 1993. Repealer effective January 1, 1994.

History: En. Sec. 3, Ch. 220, L. 1987.

15-70-317 through 15-70-320 reserved.

15-70-321. Tax on diesel fuel and volatile liquids. (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2), for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public highways or streets within the state or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions.

(2) The tax imposed in subsection (1) is:

(a) 24 cents per gallon beginning July 1, 1993;

(b) 24 3/4 cents per gallon beginning January 1, 1994; and

(c) 27 3/4 cents per gallon beginning July 1, 1994.

History: En. 84-1832.1 by Sec. 2, Ch. 60, L. 1969; amd. Sec. 2, Ch. 277, L. 1971; amd. Sec. 81, Ch. 516, L. 1973; amd. Sec. 2, Ch. 473 L. 1975; amd. Sec. 1, Ch. 514, L. 1975; amd. Sec. 4, Ch. 390, L. 1977; R.C.M. 1947, 84-1832.1; amd. Sec. 3, Ch. 632, L. 1979; amd. Sec. 2, Ch. 624, L. 1983; amd. Sec. 2, Ch. 30, L. 1987; amd. Sec. 12, Ch. 525, L. 1993; amd. Sec. 23, Ch. 575, L. 1993; amd. Sec. 3, Ch. 605, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 525 near middle, after "power to", substituted "operate" for "propel". Amendment effective January 1, 1994.

Chapter 605 in (1), near beginning after "tax", substituted "as provided in subsection (2)" for "in an amount equal to 20 cents"; inserted (2) providing for a tax of 24 cents a gallon beginning July 1, 1993, and 27 cents a gallon beginning July 1, 1994; and made minor changes in style. Amendment effective July 1, 1993.

Compiler's Comment: Section 4, Ch. 575, L. 1993, increased the tax by 3/4 cent per gallon effective January 1, 1994. Section 23, Ch. 575, L. 1993, a coordination provision, voided the amendment made by sec. 4, Ch. 575, L. 1993, and increased the tax rates in sec. 3, Ch. 605, by 3/4 cent per gallon effective January 1, 1994. The Code Commissioner inserted the rate of 24 3/4 cents per gallon effective January 1, 1994, and increased the rate to 27 3/4 cents per gallon effective July 1, 1994, to reflect the coordination instruction.

Cross-References

Allocation of portion of tax to fund highway system maintenance, 60-3-202.

15-70-322. Repealed. Sec. 44, Ch. 525, L. 1993. *Repealer effective January 1, 1994.*

History: En. Sec. 3, Ch. 162, L. 1955; amd. Sec. 2, Ch. 66, L. 1963; amd. Sec. 3, Ch. 60, L. 1969; amd. Sec. 1, Ch. 12, L. 1971; amd. Sec. 1, Ch. 277, L. 1971; amd. Sec. 80, Ch. 516, L. 1973; R.C.M. 1947, 84-1832; amd. Sec. 1, Ch. 610, L. 1979; amd. Sec. 2, Ch. 321, L. 1985.

15-70-323. Special fuel user's records. (1) Every special fuel user and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep records, receipts, and invoices and other pertinent papers that the department may require and shall produce them for the inspection of the department at any time during the business hours of the day.

(2) The records, receipts, invoices, and other pertinent papers must be kept for a period of at least 3 years from the date on which the return to which they relate was required to have been made.

History: En. Sec. 5, Ch. 162, L. 1955; amd. Sec. 2, Ch. 216, L. 1957; amd. Sec. 82, Ch. 516, L. 1973; R.C.M. 1947, 84-1834; amd. Sec. 1, Ch. 58, L. 1985; amd. Sec. 13, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 in (1), at beginning after "Every", deleted "special fuel dealer"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-324. Examination of records — enforcement of part. (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative may examine the books, papers, records, and equipment of any special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and to investigate the character of the disposition which any person makes of special fuel in order to ascertain and determine whether all excise taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer and must be, if requested by the department, accompanied by the special fuel user.

(3) For the purpose of enforcing the provisions of this part, the fact that a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles is prima facie evidence that all of the special fuel has been delivered by the special fuel user into the fuel supply

tanks of motor vehicles and consumed in the operation of motor vehicles upon the highways unless the contrary is established by satisfactory evidence.

(4) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of Canada, forward to the officials any information which it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel user, provided the other state or states furnish like information to this state.

History: En. Sec. 9, Ch. 162, L. 1955; amd. Sec. 1, Ch. 106, L. 1967; amd. Sec. 85, Ch. 516, L. 1973; amd. Sec. 2, Ch. 34, L. 1977; R.C.M. 1947, 84-1838(part); amd. Sec. 2, Ch. 16, L. 1983; amd. Sec. 14, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 in (2), (3), and (4), in five places before "special fuel user", deleted "special fuel dealer or"; in (3), near end after "consumed in the", substituted "operation" for "propulsion"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-325. Returns. (1) For the purpose of determining the amount of liability for special fuel tax, each special fuel user shall file with the department, on forms prescribed by the department, a quarterly tax return.

(2) Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that the user's annual tax liability is or will be $200 or less.

(3) The user shall make an annual report and return to the department on forms prescribed by the department, on or before January 31 of each year. If the department determines that a user filing annual returns is delinquent in making reports and payments, it shall require the person to file quarterly returns. A return, annual or quarterly, must contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of perjury. The declarations have the same force and effect as a verification. The return must show the information that the department may reasonably require for the proper administration and enforcement of this part.

(4) The special fuel user shall file the return on or before the last day of the next calendar month following the period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing, but not to exceed 30 days.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(part (a)); amd. Sec. 1, Ch. 299, L. 1979; amd. Sec. 7, Ch. 599, L. 1979; amd. Sec. 1, Ch. 200, L. 1985; amd. Sec. 15, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 in (1), before "tax", inserted "special fuel" and after "special fuel tax" deleted "herein imposed, each special fuel dealer shall file with the department a monthly tax return and"; deleted former (4) relating to inventory control data for certain types of bulk storage of special fuels (see 1993 Session Law for text); in (4), at beginning after "The", deleted "special fuel dealer or"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-326. Computation. The tax imposed by this part must be computed, with respect to special fuel for which the tax has not been paid in this state and that has been consumed by the purchaser as a special fuel user, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel consumed by the special fuel user in the operation of motor vehicles on the highways of this state.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(b); amd. Sec. 16, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 deleted (1) that provided that the tax must be computed "with respect to special fuel used by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel delivered or placed by him into the supply tank or tanks of a motor vehicle"; after "has not been paid" deleted "to a special fuel dealer" and near end, after "in the", substituted "operation" for "propulsion"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-327. Payment — deductions. The tax return must be accompanied by remittance covering the tax due under this part for the use, as defined in 15-70-301, of special fuels during the preceding period.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(c); amd. Sec. 8, Ch. 599, L. 1979; amd. Sec. 17, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 deleted second sentence that read: "A licensed special fuel dealer is allowed a deduction equal to 1% of the first 6 cents per gallon of the taxes paid by the dealer under 15-70-321 as an allowance for shrinkage, spillage, and evaporation of special fuels and other losses beyond the dealer's control"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-328. Credits. A licensed special fuel user who has paid a special fuel tax either directly or to the vendor from whom it was purchased must receive credit in the amount of:

(1) the tax paid on special fuel exported for use outside of this state or for any use off the public roads and highways of this state; or

(2) overpayment of special fuel taxes not due to the state.

History: En. Sec. 7, Ch. 162, L. 1955; amd. Sec. 1, Ch. 104, L. 1967; R.C.M. 1947, 84-1836; amd. Sec. 3, Ch. 562, L. 1989; amd. Sec. 2, Ch. 428, L. 1993; amd. Sec. 18, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 428 in (3)(a) (deleted by Ch. 525), in first sentence after "fuels", inserted "with a tax liability of $200 or greater" and at end inserted "and for which the special fuel dealer has not forgiven any liability" and in second sentence, near beginning, substituted "may not" for "shall" and after "worthless" inserted "more than once during a 3-year period"; in (3)(b) (deleted by Ch. 525), after "due", inserted "must be prorated"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 525 near beginning, after "special fuel user", deleted "or licensed special fuel dealer" and at end of former (1) deleted sentence that read: "Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state"; deleted former (2) providing for a credit for the amount of a temporary special fuel permit (see 1993 Session Law for text); deleted former (3) concerning credits for special fuel taxes paid on sales on uncollectible accounts (see 1993 Session Law for text); and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 5, Ch. 428, L. 1993, provided: "[This act] applies to sales of gasoline and special fuels on or after [the effective date of this act] and to taxes due on those sales." Effective July 1, 1993.

15-70-329. Procedures for credits — deadline. (1) If a licensed special fuel user wants to receive a refund of special fuel taxes or of the temporary permit fee, the user shall make a signed and written request to the department requesting those amounts then due. Any amount determined to be creditable by the department under 15-70-328 must first be credited on any amounts then due and payable from the special fuel user to whom the refund is due, and the department shall then certify the balance to the credit of the user. A warrant must be drawn upon the state treasurer for the amount of the claim, and the claim must be paid in the same manner as other claims against the state are paid.

(2) In case a special fuel user fails or neglects to file a request for refund of special fuel taxes within 12 months from the date the user's special fuel license became canceled, the department is under no obligation to make a refund.

(3) A request for refund or credit under this section must be made within 3 years from the date of the payment for which a refund or credit is claimed.

History: En. Sec. 8, Ch. 162, L. 1955; amd. Sec. 2, Ch. 104, L. 1967; amd. Sec. 84, Ch. 516, L. 1973; R.C.M. 1947, 84-1837; amd. Sec. 1, Ch. 33, L. 1993; amd. Sec. 19, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 33 inserted (3) specifying date for request for refund or credit; and made minor changes in style.

Chapter 525 in (1), in first sentence near beginning after "special fuel user", deleted "or licensed special fuel dealer" and after "user" deleted "or dealer" and in second sentence, near middle after "payable from the", deleted "special fuel dealer or" and near end, after "credit of the", deleted "dealer or"; in (2), near beginning after "user", deleted "or special fuel dealer"; inserted (3) specifying date for request for refund or credit; and made minor changes in style. Amendment effective January 1, 1994.

Code Commissioner Correction: Section 1(2), Ch. 33, substituted "the user's or dealer's" for "his". Because sec. 19, Ch. 525, deleted references to fuel dealers in the section, the reference to dealers in Ch. 33 was not codified.

Applicability: Section 2, Ch. 33, L. 1993, provided: "[This act] applies to special fuel taxes and temporary permit fees paid on or after October 1, 1993."

15-70-330. Penalties for refusal or failure to file return or pay tax when due. (1) In case of any special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues; provided, however, that if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, there must be added to the amount due and unpaid interest at the rate of 1% per month or fraction of a month from the date the tax was due to the date of payment in full.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(d), (e); amd. Sec. 1, Ch. 591, L. 1979; amd. Sec. 20, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 in (1), near beginning after "case of any", deleted "special fuel dealer or" and near middle, after "that if any", deleted "such special fuel dealer"; in (2), at beginning, substituted "Whenever" for "Where a special fuel dealer or"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-331. Deficiency. If it be determined by the department that the tax reported by any special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of 1% per month or fraction of a month from the date the return was due.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(f); amd. Sec. 21, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 after "tax reported by any" deleted "special fuel dealer or"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-332. Determination if no return made. (1) If any special fuel user, whether or not the user is licensed as a special fuel user, fails, neglects, or refuses to file a special fuel tax return when due, the department shall on the basis of information available to it determine the tax liability of the special fuel user for the period during which a return was not filed, and to the tax as determined, the department shall add the penalty and interest provided in 15-70-330(1).

(2) An assessment made by the department pursuant to this section or to 15-70-331 is presumed to be correct, and in any case in which the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(g); amd. Sec. 22, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 in (1), near beginning after "If any" and near middle after "liability of the", deleted "special fuel dealer or"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-333. Fraudulent return — penalty. If a special fuel user files a false or fraudulent return with intent to evade the tax imposed by this part:

(1) there must be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction of a month on the deficiency from the date the tax was due to the date of payment, in addition to all other penalties prescribed by law; and

(2) the person is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $2,000 or by imprisonment of not less than 30 days or more than 6 months, or by both fine and imprisonment.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(h); amd. Sec. 23, Ch. 525, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 525 at beginning, after "If", deleted "any special fuel dealer or"; inserted (2) making person who files false return guilty of misdemeanor; and made minor changes in style. Amendment effective January 1, 1994.

15-70-334. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed or recorded.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(k); amd. Sec. 39, Ch. 439, L. 1981.

15-70-335. Statute of limitation. Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency shall be assessed under 15-70-331 within 3 years after the 25th day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within 3 years after the return is filed, whichever period expires later.

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(i); amd. Sec. 2, Ch. 58, L. 1985.

15-70-336. Criminal penalties. (1) Any person violating any provision of 15-70-101 or this part, except 15-70-311 through 15-70-314 and 15-70-321, is guilty of a misdemeanor unless the act is by any other law of this state declared to be a felony and upon conviction is punishable by a fine of not less than $100 or more than $2,000 or by imprisonment for not less than 30 days or more than 6 months or by both such fine and imprisonment.

(2) The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this part.

History: En. Sec. 10, Ch. 162, L. 1955; amd. Sec. 3, Ch. 216, L. 1957; R.C.M. 1947, 84-1839.

15-70-337 through 15-70-340 reserved.

15-70-341. *(Effective January 1, 1994)* **License, fee, and security of special fuel distributors.** (1) All special fuel distributors, including importers and exporters as defined in 15-70-301, prior to the commencement of doing business, shall file an application for a license with the department of transportation, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department. Each distributor shall at the same time file security with the department in an amount to be determined by the department. However, the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month. Upon approval of the application, the department shall issue to the distributor a nonassignable license that continues in force until surrendered or revoked.

(2) A person who engages in the wholesale distribution of special fuel in this state exercising the option under 15-70-301(8)(c) and not already licensed under 15-70-202 shall pay an annual license fee of $200.

(3) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100.

(4) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

History: En. Sec. 24, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-342. *(Effective January 1, 1994)* **License to sell special fuel on which refund may be claimed.** (1) A person other than a licensed distributor shall obtain a license from the department of transportation prior to selling special fuel on which a refund may be claimed. The application for a license must contain the applicant's name, address, place or places of business in the state of Montana, and other information that may be required by the department. Licenses issued must bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. A nontransferable license must be issued and is effective until canceled or suspended by the department.

(2) Any person failing to comply with this section is subject to a fine of not less than $50 or more than $200 or imprisonment in the county jail for a period not less than 10 days or more than 60 days, or both the fine and imprisonment.

History: En. Sec. 25, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-343. *(Effective January 1, 1994)* **Special fuel license tax — rate.** (1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount [imposed under 15-70-321] for each gallon of special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor.

(2) Special fuel may not be included in the measure of the distributor's license tax if sold:

(a) to the United States government, state of Montana, any other state, and any county, incorporated city, town, and school district of this state;

(b) in bulk delivery quantities of 200 gallons or more; or

(c) for export, unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined.

History: En. Sec. 26, Ch. 525, L. 1993.

Compiler's Comments

Code Commissioner Clarification: In second sentence of (1), after "amount", the Code Commissioner substituted the bracketed reference to 15-70-321 for "of 20 cents" to reflect the coordination of Ch. 575 and Ch. 605, L. 1993.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-344. *(Effective January 1, 1994)* **Distributor's statement and payment — confidentiality.** (1) Each distributor shall, not later than the

25th day of each calendar month, render to the department of transportation a signed statement that specifies all special fuel distributed and received by the distributor in this state during the preceding calendar month and that contains other information the department may reasonably require in order to administer the special fuel license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-343, less any refund credit issued under 15-70-356 and less 1% of the total tax that may be deducted by the distributor as an allowance for collection.

(2) A distributor engaged in or carrying on a business at more than one location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of special fuel. This section may not be construed to prohibit:

(a) the delivery to a distributor or a distributor's authorized representative of a certified copy of any return or report filed in connection with the distributor's tax;

(b) the inspection by the attorney general or by another legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on special fuel or by any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

History: En. Sec. 27, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-345. *(Effective January 1, 1994)* **Recordkeeping requirements.** Each distributor or any other person dealing in, transporting, receiving, or storing special fuel shall keep for a period not to exceed 3 years the records, receipts, and invoices and any other pertinent papers and information that the department of transportation may require.

History: En. Sec. 28, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-346. Terminated. Section 39(5), Ch. 15, Sp. L. July 1992.

History: En. Sec. 17, Ch. 15, Sp. L. July 1992.

15-70-347. Terminated. Section 39(4), Ch. 15, Sp. L. July 1992.

History: En. Sec. 18, Ch. 15, Sp. L. July 1992.

15-70-348. *(Effective January 1, 1994)* **Invoice of distributors.** Each distributor in this state shall at the time of delivery, except when authorized by the department of transportation, issue to the purchaser an invoice that states the number of gallons of special fuel covered by the invoice and other information the department may require.

History: En. Sec. 29, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-349. *(Effective January 1, 1994)* **Examination of records.** (1) The department of transportation or its authorized representative may examine the books, papers, records, and equipment of any special fuel distributor or any person dealing in, transporting, or storing special fuel, as defined in this part, and may investigate the character of the disposition that any person makes of the special fuel in order to ascertain and determine whether all license taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of each distributor or any person dealing in, transporting, or storing special fuel must be open and subject to inspection by the department or its authorized representative during business hours in order to ascertain the amount of license tax due.

History: En. Sec. 30, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-350 reserved.

15-70-351. *(Effective January 1, 1994)* **Information reports — penalty — confidentiality.** (1) A person receiving special fuel, including an importer, exporter, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships special fuel from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of special fuel contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor, importer, or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of $100 for each failure or refusal.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of special fuel. This section may not be construed to prohibit:

(a) the delivery to a person or the person's authorized representative of a certified copy of any report filed under subsection (1);

(b) the inspection by the attorney general or other legal representative of the state of the report or statement of a person if a person or distributor brings an action to set aside or review the tax based on the report or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

(c) the publication of statistics classified to prevent the identification of particular reports or statements and the items in the reports or statements;

(d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on special fuel or by the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

History: En. Sec. 31, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-352. *(Effective January 1, 1994)* **Penalties for delinquency.** (1) Any license tax not paid within the time provided in 15-70-344 is delinquent, a penalty of 10% is added to the tax, and the tax bears interest at the rate of 1% on the tax due for each calendar month or fraction of a month. Upon a showing of good cause by the distributor, the department of transportation may waive penalty.

(2) If any distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information it requires in the statement and determine the amount of the license tax due from the dis-

tributor and shall add a penalty of $25 or 10% of the amount due, whichever is greater, together with an interest rate of 1% per month or fraction of a month from the date the statements should have been made and the license tax should have been paid.

(4) The department shall proceed to collect the license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax.

History: En. Sec. 32, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-353. *(Effective January 1, 1994)* **Fraudulent returns — penalty.** If a special fuel distributor files a false or fraudulent return with intent to evade the tax imposed by this part, there is added to the amount of deficiency determined by the department of transportation a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction of a month on the deficiency from the date the tax was due to the date of payment, in addition to all other penalties prescribed by law.

History: En. Sec. 33, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-354. *(Effective January 1, 1994)* **Warrant for distraint.** If all or part of the tax imposed by this part is not paid when due, the department of transportation may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded thereafter. An action may not be maintained to enjoin the collection of all or any part of the license tax.

History: En. Sec. 34, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-355. *(Effective January 1, 1994)* **Statute of limitations.** Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency must be assessed within 3 years from the due date of the return or the date of filing the return, whichever period expires later.

History: En. Sec. 35, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-356. *(Effective January 1, 1994)* **Refund or credit authorized.** (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines, tractors used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel so used. The refund may not exceed the tax paid or to be paid to the state.

(2) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(3) A distributor who sells special fuel that is not subject to taxation under 15-70-343 shall complete an exemption certificate for each sale and submit the certificate with the distributor's monthly report.

(4) (a) A distributor is entitled to a credit for the tax paid to the department of transportation on those sales of special fuel with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund.

History: En. Sec. 36, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-357 through 15-70-360 reserved.

15-70-361. *(Effective January 1, 1994)* **Required records.** (1) Special fuel purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which it was used. Special fuel on hand, determined by actual measurement, must be deducted from a claim and must be reported as an opening inventory on the next claim.

(2) Service stations, bulk dealers, and marinas shall prepare a separate and complete invoice for each withdrawal of special fuel for own use upon which a refund is to be claimed.

(3) When a highway use of special fuel is not deducted from the claim, the applicant shall substantiate purchases of special fuel and miles traveled for licensed motor vehicles upon request of the department of transportation.

(4) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the special fuel used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

(a) the total number of miles traveled on and off public roads by each licensed vehicle;

(b) the total number of gallons of special fuel used in each vehicle; and

(c) purchase invoices supporting all special fuel handled through bulk storage.

(5) An exporter or any other person who transports special fuel out of Montana for sale, use, or consumption outside Montana shall maintain detailed and current records of withdrawal, transportation, ownership, and delivery of the special fuel to destinations outside Montana as required by the department.

History: En. Sec. 37, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-362. *(Effective January 1, 1994)* **Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases.** (1) An applicant whose use qualifies as agricultural use may apply for a refund of 60% of the applicable tax on the gallons of special fuel as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use.

(2) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence as may be required by the department of transportation.

(3) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by 15-70-361.

History: En. Sec. 38, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-363. *(Effective January 1, 1994)* **Determination of highway use.** Highway use for each vehicle is determined by dividing the rate of the average miles per gallon into the number of miles traveled on public roads.

History: En. Sec. 39, Ch. 525, L. 1993.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-364. *(Effective January 1, 1994)* **Application for refund or credit — filing — correction by department.** (1) The application for a refund must be a signed statement on a form furnished by the department of transportation. Except for a claim for a credit for taxes paid on unpaid accounts, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of special fuel purchased, the total amount of special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 14 months after the date on which the special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

History: **En. Sec. 40, Ch. 525, L. 1993.**

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-365. *(Effective January 1, 1994)* **Approval or rejection of claim.** (1) The department of transportation has 120 working days after receiving the claim to approve or reject it. If approved, the department shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor; for all other persons, a warrant must be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject the claim in full. If a claim is rejected, the department may suspend the claimant's right to refund for a period not to exceed 1 year.

History: **En. Sec. 41, Ch. 525, L. 1993.**

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-366. *(Effective January 1, 1994)* **Penalties.** A distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided, who is delinquent in the payment of any license tax imposed by this part, who makes any false statement with reference to the distributor's business, who makes any false statement on any claim for refund, or who violates any provision of this part shall, in addition to any other penalties imposed, be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed $1,000 or be imprisoned in the county jail for not to exceed 6 months, or both.

History: **En. Sec. 42, Ch. 525, L. 1993.**

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Part 4 reserved

Part 5

Alcohol Tax Incentive and Administration

15-70-501. Short title. This part may be cited as the "Alcohol Tax Incentive and Administration Act of 1983".

History: En. Sec. 1, Ch. 649, L. 1983.

15-70-502. Purpose. The purpose of this part is to establish schedules for the tax incentive for the production of alcohol to be blended for gasohol and to provide for the proper administration and enforcement of the tax incentive. The schedules for the tax incentive are designed to stimulate the development of alcohol fuel production in Montana while limiting the cost to the state of the tax incentive to amounts that are reasonable in relation to the highway revenue needs of Montana.

History: En. Sec. 2, Ch. 649, L. 1983.

15-70-503. Definitions. As used in this part, the definitions in 15-70-201 and the following definitions apply:

(1) "Alcohol distributor" means any person who, for the purpose of making gasohol, engages in the business of producing alcohol for sale, use, or distribution.

(2) "Department" means the department of transportation.

(3) "Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

(4) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state.

History: En. Sec. 3, Ch. 649, L. 1983; amd. Sec. 2, Ch. 697, L. 1985; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 1, Ch. 723, L. 1991.

15-70-504 through 15-70-510 reserved.

15-70-511. Licensing of alcohol distributors. Every alcohol distributor, prior to doing business, shall file with the department an application for a license, using forms prescribed and furnished by the department and setting forth such information as may be requested by the department. Upon approval of the application, the department shall issue the distributor a nonassignable license that continues in force until surrendered or canceled.

History: En. Sec. 4, Ch. 649, L. 1983.

15-70-512. Distributor's statement. Each alcohol distributor shall, not later than the 25th day of each calendar month, render to the department a statement, signed by him, that includes the following:

(1) the number of gallons of alcohol manufactured or imported by the distributor during the preceding calendar month;

(2) the name of each gasohol dealer to whom he sold alcohol and the number of gallons sold to each dealer; and

(3) such other information as the department may reasonably require to administer the tax laws of this state.

History: En. Sec. 5, Ch. 649, L. 1983.

15-70-513. Recordkeeping requirements. The records of each alcohol distributor and gasohol dealer must be kept for a period of not more than 3 years and must include receipts, invoices, and such other information as the department may require.

History: En. Sec. 6, Ch. 649, L. 1983.

15-70-514. Examination of records. The department or its authorized representative may examine the books, papers, records, and equipment of any alcohol distributor or gasohol dealer.

History: En. Sec. 7, Ch. 649, L. 1983.

15-70-515 through 15-70-520 reserved.

15-70-521. Denaturing alcohol — refund authorized. Any alcohol distributor who, for the purpose of denaturing alcohol distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in 15-70-221, of tax paid on the gasoline used.

History: En. Sec. 8, Ch. 649, L. 1983.

15-70-522. *(Temporary)* **Tax incentive for production of alcohol — written plan required — reservation of incentives — rules.** (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

(i) was blended with gasoline for sale as gasohol in Montana;

(ii) was exported from Montana and has been blended with gasoline for sale as gasohol; or

(iii) was used in the production of ethyl tertiary butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) (a) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is 30 cents per gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive per gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol.

(b) Beginning July 1, 2001, there is no tax incentive.

(3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for the incentive under this part may not exceed $6 million in any consecutive 12-month period beginning April 1, 1985.

(4) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed $3 million in any consecutive 12-month period beginning April 1, 1985.

(5) An alcohol distributor who begins production after July 1, 1991, may not receive tax incentive payments under subsection (2) unless the distributor has provided a written plan to the department of transportation at least 18 months before the distributor's anticipated collection of the tax incentives. The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of alcohol;

(b) the anticipated source of agricultural products used in the production of alcohol; and

(c) the anticipated time, quantity, and duration of production of alcohol.

(6) An alcohol distributor in production before July 1, 1991, is entitled to apply for the maximum tax incentive payment allowed under subsection (4) without providing a written plan as required in subsection (5).

(7) (a) Except as provided in subsection (7)(b), the department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production. Payment of the alcohol tax incentives must be based on actual production.

(b) No later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection if the department determines that the alcohol distributor has not materially complied with the written plan.

(8) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (7)(a).

(9) The department shall prescribe rules necessary to carry out the provisions of this section. *(Terminates July 1, 1997—sec. 2, Ch. 592, L. 1993.)*

15-70-522. *(Effective July 1, 1997)* **Tax incentive for production of alcohol — written plan required — reservation of incentives — rules.** (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

(i) was blended with gasoline for sale as gasohol in Montana;

(ii) was exported from Montana and has been blended with gasoline for sale as gasohol; or

(iii) was used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is:

(a) beginning July 1, 1983, 70 cents per gallon;

(b) beginning April 1, 1985, 50 cents per gallon;

(c) beginning April 1, 1987, 30 cents per gallon; and

(d) beginning July 1, 2001, and thereafter, there is no tax incentive.

(3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for the incentive under this part may not exceed $6 million in any consecutive 12-month period beginning April 1, 1985.

(4) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed $1.5 million in any consecutive 12-month period beginning April 1, 1985.

(5) An alcohol distributor who begins production after July 1, 1991, may not receive tax incentive payments under subsection (2) unless he has provided a written plan to the department of transportation at least 18 months before his anticipated collection of the tax incentives. The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of gasohol;

(b) the anticipated source of agricultural products used in the production of gasohol; and

(c) the anticipated time, quantity, and duration of production of gasohol.

(6) An alcohol distributor in production before July 1, 1991, is entitled to apply for the maximum tax incentive payment allowed under subsection (4) without providing a written plan as required in subsection (5).

(7) (a) Except as provided in subsection (7)(b), the department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production. Payment of the alcohol tax incentives must be based on actual production.

(b) No later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection if the department determines that the alcohol distributor has not materially complied with the written plan.

(8) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (7)(a).

(9) The department shall prescribe rules necessary to carry out the provisions of this section.

History: En. Sec. 9, Ch. 649, L. 1983; amd. Sec. 3, Ch. 697, L. 1985; amd. Sec. 1, Ch. 593, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 2, Ch. 723, L. 1991; amd. Sec. 1, Ch. 592, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 592 in (1)(a)(iii), after "ethyl", inserted "tertiary"; deleted former (2)(a) that read: "(a) beginning July 1, 1983, 70 cents per gallon"; deleted former (2)(b) that read: "(b) beginning April 1, 1985, 50 cents per gallon"; in (2)(a), before "30 cents", deleted "beginning April 1, 1987" and after "gallon" inserted language regarding the tax incentive; in (4) increased cap on incentive payments from $1.5 million to $3 million; in (5)(a), (5)(b), and (5)(c) substituted "alcohol" for "gasohol"; and made minor changes in style. Amendment terminates July 1, 1997.

15-70-523. Application for payment of tax incentive. (1) The claimant shall apply for payment of tax incentive by signed statement, on a form furnished by the department. The form must be accompanied by:

(a) the original production records and invoices issued to the gasohol dealer at the time of sale and delivery, showing total gallons of alcohol sold; and

(b) a certificate of blending issued by the alcohol purchaser showing the total gallons of alcohol blended and the date of blending.

(2) Application for the payment of the tax incentives must be filed with the department not later than the 25th day of the calendar month following the month for which the claim is being made.

History: **En. Sec. 10, Ch. 649, L. 1983; amd. Sec. 4, Ch. 697, L. 1985.**

15-70-524 through 15-70-526 reserved.

15-70-527. Penalty for failure to file. Any alcohol distributor who fails to obtain a license under 15-70-511 or to file the statements required by 15-70-512 in the manner or within the time provided in 15-70-512 or who makes any false statement is guilty of a misdemeanor and upon conviction must be fined not more than $1,000 or imprisoned in the county jail for not more than 6 months, or both.

History: **En. Sec. 11, Ch. 649, L. 1983.**

CHAPTER 71

LICENSE TAX ON VEHICLES PROPELLED BY LIQUEFIED PETROLEUM GAS

Part 1 — General Provisions

15-71-101. Tax to be collected on motor vehicles self-propelled by liquefied petroleum gas — recording and reporting of liquefied petroleum gas deliveries.
15-71-102. Temporary trip permit required.
15-71-103. Certificate and fee nontransferable.
15-71-104. Disposition of funds.
15-71-105. Violations and penalties.
15-71-106 through 15-71-109 reserved.
15-71-110. Writeoff of collection of tax, penalty, or interest — rules.
15-71-111. Surtax.

Chapter Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Part 1

General Provisions

15-71-101. Tax to be collected on motor vehicles self-propelled by liquefied petroleum gas — recording and reporting of liquefied

petroleum gas deliveries. (1) The department of transportation shall, under the rules issued by the department, collect or cause to be collected from owners or operators of motor vehicles powered by a liquefied petroleum gas an annual license tax fee on each vehicle. The license tax fee is prorated on a quarterly basis and may be paid quarterly, semiannually, or annually according to the following schedule:

(a) passenger cars and pickups whose licensed gross vehicle weight is 10,000 pounds or less, $108;

(b) motor trucks and truck tractors whose licensed gross vehicle weight is over 10,000 pounds and less than 18,000 pounds, $144;

(c) motor trucks and truck tractors whose licensed gross vehicle weight is 18,000 pounds or more and less than 48,000 pounds, $361;

(d) motor trucks and truck tractors whose licensed gross vehicle weight is 48,000 pounds or more, $1,806;

(e) school buses used to provide transportation services on contract with school districts in this state, $144.

(2) Upon payment of the tax required by this section, the department shall provide, to be carried in each vehicle, a certificate that is valid for a period of no less than a calendar quarter or for a further calendar period for which the tax is paid.

(3) When a dealer delivers liquefied petroleum gas for use to power a motor vehicle, the dealer shall record the identifying number of the certificate issued and required to be carried in the motor vehicle as provided in subsection (2). On or before the last day of January, April, July, and October, the dealer shall report to the department each delivery during the preceding calendar quarter of liquefied petroleum gas required to be recorded under this subsection.

History: En. 84-1862 by Sec. 3, Ch. 473, L. 1975; amd. Sec. 1, Ch. 47, L. 1977; R.C.M. 1947, 84-1862; amd. Sec. 1, Ch. 595, L. 1987; amd. Sec. 1, Ch. 94, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

15-71-102. Temporary trip permit required. (1) Upon entering the state, a nonresident operating any motor vehicle powered by liquefied petroleum gas is required to purchase a liquid petroleum gas temporary trip permit. The permits must be issued by scale house personnel, motor carrier services division personnel, Montana highway patrol officers, and other enforcing agents that the department of transportation may prescribe.

(2) A temporary liquid petroleum gas permit costs $20. The permit is valid for a period of time not to exceed 72 hours and is automatically void if the vehicle leaves the state during this period. Special liquid petroleum gas permits, remittance forms, and any other papers necessary for the enforcement of this chapter must be furnished by the department.

History: En. 84-1862.1 by Sec. 2, Ch. 47, L. 1977; R.C.M. 1947, 84-1862.1; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 5, Ch. 575, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 575 in (1), in second sentence, substituted "motor carrier services division personnel" for "gross vehicle weight patrol crews"; and made minor changes in style. Amendment effective January 1, 1994.

15-71-103. Certificate and fee nontransferable. The identifying certificate and license fee paid for each vehicle shall not be transferable on the sale or change of ownership to any person or vehicle other than that for which it was issued, with one exception. If the owner of a vehicle for which a current certificate has been issued replaces the vehicle, the remaining amount of tax paid for the unused calendar period may be credited to the tax payable for the issuance of a new certificate. The credit may not exceed the amount applicable to the unused period, and a refund is not allowed.

History: En. 84-1863 by Sec. 4, Ch. 473, L. 1975; amd. Sec. 3, Ch. 47, L. 1977; R.C.M. 1947, 84-1863.

15-71-104. Disposition of funds. All taxes collected under this chapter must, in accordance with the provisions of 15-1-501(6), be placed in the state special revenue fund to the credit of the department of transportation.

History: En. 84-1865 by Sec. 6, Ch. 473, L. 1975; R.C.M. 1947, 84-1865; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 19, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 after "chapter" substituted "must, in accordance with the provisions of 15-1-501(6), be placed" for "shall be turned over promptly to the state treasurer and the state treasurer shall place the same". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

15-71-105. Violations and penalties. Any person violating any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $2,000 or by imprisonment for not less than 30 days or more than 6 months or by both such fine and imprisonment. The fine and imprisonment provided in this section shall be in addition to any other penalty imposed by any other provision in this chapter.

History: En. 84-1864 by Sec. 5, Ch. 473, L. 1975; R.C.M. 1947, 84-1864.

15-71-106 through 15-71-109 reserved.

15-71-110. Writeoff of collection of tax, penalty, or interest — rules. (1) (a) The department of transportation may write off the collection of any tax, penalty, or interest due to the state under this chapter whenever the department determines that it is not cost-effective for the department to attempt to collect the tax, penalty, or interest.

(b) The department shall establish procedures to determine the cost-effectiveness of collecting the tax, penalty, or interest.

(c) If the department writes off the collection of any tax, penalty, or interest, the department shall place in the taxpayer's file a written justification for the writeoff that includes a determination that attempted collection is not cost-effective.

(2) The department shall adopt rules to establish the procedures to carry out the purposes of this section.

History: En. Sec. 3, Ch. 428, L. 1993.

Compiler's Comments

Applicability: Section 5, Ch. 428, L. 1993, provided: "[This act] applies to sales of gasoline and special fuels on or after [the effective date of this act] and to taxes due on those sales." Effective July 1, 1993.

Effective Date: Section 6, Ch. 428, L. 1993, provided: "[This act] is effective July 1, 1993."

15-71-111. *(Temporary)* **Surtax.** Each owner or operator subject to a license tax fee under this part shall pay, in addition to the license tax fee determined under 15-71-101(1), a surtax of 7% of the liability.

History: En. Sec. 19, Ch. 15, Sp. L. July 1992.

Compiler's Comments

Applicability — Termination: Section 39(6), Ch. 15, Sp. L. July 1992, provided that this section applies to the tax year beginning after December 31, 1992, and ending before January 1, 1994. This section terminates upon receipt of taxes for tax year 1993.

TITLE 16

ALCOHOL AND TOBACCO

Ch.
1. Administration and Taxation.
2. State Liquor Stores.
3. Control of Liquor, Beer, and Wine.
4. License Administration.
5. Identification Cards. Repealed. Sec. 2, Ch. 26, L. 1979.
6. Enforcement.
Chapters 7 through 9 reserved.
10. Regulation of Cigarette Marketing.
11. Taxation of Tobacco Products.

CHAPTER 1

ADMINISTRATION AND TAXATION

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Part 1

General Provisions

16-1-101. Citation — declaration of policy — subject matters of regulation. (1) Chapters 1 through 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, and distribution of alcoholic beverages within the state of Montana, as that term is defined in this code, subject to the authority of the state of Montana through the Montana department of revenue.

(3) This code is an exercise of the police power of the state, in and for the protection of the welfare, health, peace, morals, and safety of the people of the state, and its provisions shall be construed for the accomplishment of such purposes.

History: En. Sec. 1, Ch. 105, L. 1933; re-en. Sec. 2815.60, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1951; Sec. 4-101, R.C.M. 1947; amd. and redes. 4-1-101 by Sec. 1, Ch. 387, L. 1975; R.C.M. 1947, 4-1-101; amd. Sec. 1, Ch. 68, L. 1987.

16-1-102. Policy as to sale of beer. It is hereby declared to be the policy of the state of Montana that the manufacture, transportation, distribution, sale, and possession of "beer", as that term is defined in this code and which contains not more than 7% of alcohol by weight, shall be controlled and regulated as provided under this code. Beer, porter, ale, stout, and malt liquors containing more than 7% of alcohol by weight and which are defined as "liquor" shall be subject to the regulations and controls provided for liquor.

History: En. Sec. 1, Ch. 106, L. 1933; re-en. Sec. 2815.10, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1951; Sec. 4-301, R.C.M. 1947; amd. and redes. 4-1-102 by Sec. 45, Ch. 387, L. 1975; R.C.M. 1947, 4-1-102.

16-1-103. Policy as to retail sale of liquor. It is the policy of the state that it is necessary to further regulate and control the sale and distribution of alcoholic beverages within the state and to ensure the entire control of the sale of liquor in the department of revenue. It is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the department be empowered and authorized to grant licenses to persons qualified under this code to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this code and under rules promulgated by the department and under its strict supervision and control and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this code. The restrictions, regulations, and provisions contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the people of the state.

History: En. Preamble, Ch. 84, L. 1937; Sec. 4-401, R.C.M. 1947; amd. and redes. 4-1-103 by Sec. 78, Ch. 387, L. 1975; R.C.M. 1947, 4-1-103; amd. Sec. 1, Ch. 5, L. 1979.

Cross-References

Rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

16-1-104. Intent and construction of code. The purpose and intent of this code are to prohibit transactions in alcoholic beverages which take place wholly within the state of Montana except under state control as specifically provided by this code, and every section and provision of this code shall be construed accordingly. The provisions of this code dealing with the importation, sale, and disposition of alcoholic beverages within the state, through the instrumentality of a department and otherwise, provide the means by which such state control shall be made effective, and nothing in this code shall be construed as forbidding, affecting, or regulating any transaction which is not subject to the legislative authority of the state.

History: En. Sec. 99, Ch. 105, L. 1933; re-en. Sec. 2815.159, R.C.M. 1935; Sec. 4-233, R.C.M. 1947; amd. and redes. 4-1-104 by Sec. 42, Ch. 387, L. 1975; R.C.M. 1947, 4-1-104; amd. Sec. 2, Ch. 68, L. 1987.

Cross-References

Statutory construction, Title 1, ch. 2.

16-1-105. Divisions of code. This code is divided into six chapters. Chapter 1 relates to the authority of the department of revenue to administer this code and the powers and functions of the department. Chapter 2 relates to the establishment of state stores and the keeping and selling of liquors. Chapter 3 relates to the control of liquor, wine, and beer. Chapter 4 relates to license administration. Chapter 5, now repealed, related to identification cards. Chapter 6 relates to enforcement.

History: En. Sec. 3, Ch. 105, L. 1933; re-en. Sec. 2815.62, R.C.M. 1935; Sec. 4-103, R.C.M. 1947; amd. and redes. 4-1-105 by Sec. 2, Ch. 387, L. 1975; R.C.M. 1947, 4-1-105; amd. Sec. 3, Ch. 68, L. 1987; amd. Sec. 53, Ch. 370, L. 1987.

16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Beer importer" means a person other than a brewer who imports malt beverages.

(6) "Brewer" means a person who produces malt beverages.

(7) "Department" means the department of revenue, unless otherwise specified.

(8) "Immediate family" means a spouse, dependent children, or dependent parents.

(9) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(10) “Industrial use” means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(11) “Liquor” means an alcoholic beverage except beer and table wine.

(12) “Malt beverage” means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(13) “Package” means a container or receptacle used for holding an alcoholic beverage.

(14) “Posted price” means the retail price of liquor and table wine as fixed and determined by the department and in addition an excise and license tax as provided in this code.

(15) “Proof gallon” means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(16) “Public place” means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(17) “Rules” means rules adopted by the department or the department of justice pursuant to this code.

(18) “State liquor facility” means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(19) “State liquor store” means a retail store operated by the department in accordance with this code for the purpose of selling liquor and table wine.

(20) “Storage depot” means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(21) “Subwarehouse” means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler’s or table wine distributor’s warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(22) “Table wine” means wine that contains not more than 16% alcohol by volume.

(23) “Table wine distributor” means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(24) “Warehouse” means a building or structure located in Montana owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(25) “Wine” means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in

the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine.

History: Ap.p. Sec. 110, Ch. 387, L. 1975; Sec. 4-1-107, R.C.M. 1947; Ap.p. Sec. 14, Ch. 84, L. 1937; Sec. 4-416, R.C.M. 1947; amd. and redes. 4-2-204 by Sec. 93, Ch. 387, L. 1975; amd. Sec. 3, Ch. 496, L. 1977; Sec. 4-2-204, R.C.M. 1947; R.C.M. 1947, 4-1-107, 4-2-204(part); amd. Sec. 2, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 2, Ch. 5, L. 1979; amd. Sec. 2, Ch. 699, L. 1979; amd. Sec. 1, Ch. 519, L. 1981; amd. Sec. 1, Ch. 595, L. 1983; amd. Sec. 1, Ch. 16, L. 1985; amd. Sec. 1, Ch. 19, L. 1985; amd. Sec. 1, Ch. 141, L. 1985; amd. Sec. 4, Ch. 68, L. 1987; amd. Sec. 8, Ch. 314, L. 1991; amd. Sec. 1, Ch. 228, L. 1993; amd. Sec. 1, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 228 substituted agency franchise agreement for agency agreement as defined term; and made minor changes in style. Amendment effective March 30, 1993.

Chapter 414 in definition of Department, at end, inserted "unless otherwise specified"; in definition of rules substituted "adopted" for "published" and after "department" inserted "or the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

Applicability: Section 6, Ch. 228, L. 1993, provided: "[This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act]." Effective March 30, 1993.

Cross-References

"Alcohol distributor" defined, 15-70-503.

"Barrel" defined, 30-12-101.

Definition of blood, breath, and urine alcohol concentration, 61-8-407.

Pull tabs and other detachable openings prohibited, 75-10-302.

Part 2

Scope of Code and Exemptions

16-1-201. Acts not covered by code. (1) Nothing in this code shall prevent any brewer, distiller, or other person, duly licensed under the provisions of any statute of the United States of America for the manufacture of alcoholic beverages, from having or keeping alcoholic beverages in a place and in the manner authorized by or under any such statute.

(2) It is hereby declared to be the policy of the state of Montana that the manufacture of alcoholic beverages, including the distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws of the United States, shall be authorized and permitted by any brewer, distiller, rectifier, or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States, provided the department may make such rules as the department deems necessary with respect thereto not inconsistent with this code or with the statutes of the United States of America or regulations issued under the provisions of the federal Alcohol Administration Act, Title 27, United States Code, sections 201 through 212, inclusive, or regulations issued under the provisions of the Internal Revenue Code, Title 26, United States Code, sections 5001 through 5693, inclusive.

(3) Nothing in this code shall prevent:

(a) the sale of liquor or table wine by any person to the department;

(b) the purchase, importation, and sale of liquor and table wine by the department for the purposes of and in accordance with this code.

History: En. Sec. 35, Ch. 105, L. 1933; re-en. Sec. 2815.94, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1965; Sec. 4-140, R.C.M. 1947; amd. and redes. 4-1-202 by Sec. 14, Ch. 387, L. 1975; R.C.M. 1947, 4-1-202; amd. Sec. 5, Ch. 68, L. 1987.

Cross-References

Municipal regulation — location of distilleries, 7-21-4204.

16-1-202. Preparations not subject to code. (1) Subject to the provisions of this section, nothing in this code shall, by reason only that such preparation contains alcohol, prevent the manufacture, sale, purchase, or consumption of any:

(a) extract, essence, or tincture or other preparation containing alcohol which is prepared according to a formula of the United States Pharmacopoeia or according to a formula approved of by the department; or

(b) proprietary or patent medicine prepared according to a formula approved of by the department.

(2) The department, if of opinion that any such proprietary or patent medicine, extract, essence, tincture, or preparation which contains alcohol or any other preparation of a solid, semisolid, or liquid nature containing alcohol which, or any extract from which, can be used as a beverage or as the ingredient of any beverage, may prohibit the sale thereof by retail within the state or the possession of the same for sale by retail within the state, except by a state liquor store or by persons duly licensed by the department to keep and sell the same by retail in accordance with this code and the regulations made thereunder.

(3) The department shall notify the manufacturer or vendor of such proprietary or patent medicine, extract, essence, tincture, or preparation of the prohibition.

History: En. Sec. 36, Ch. 105, L. 1933; re-en. Sec. 2815.95, R.C.M. 1935; Sec. 4-141, R.C.M. 1947; amd. and redes. 4-1-203 by Sec. 15, Ch. 387, L. 1975; R.C.M. 1947, 4-1-203(part).

Cross-References

Patent medicine prohibition, 16-6-308.

16-1-203. Health professions exemption. A physician, dentist, veterinarian, or pharmacist, acting within the scope of his professional responsibility and license to practice, who prescribes, prepares, or administers alcohol or substances containing alcohol and sells or charges a fee does not violate the prohibitions of this code.

History: En. 4-1-204 by Sec. 111, Ch. 387, L. 1975; R.C.M. 1947, 4-1-204.

Cross-References

Licensing and regulation of physicians, dentists, veterinarians, and pharmacists, Title 37, ch. 2 through 7 and 18.

16-1-204. Licensed hospital or health care facility. Any person in charge of an institution regularly conducted as a licensed hospital or health care facility may administer alcoholic beverages purchased by him to any patient or inmate of the institution and may charge for the alcoholic beverages so administered.

History: **En. Sec. 34, Ch. 105, L. 1933; re-en. Sec. 2815.93, R.C.M. 1935; amd. Sec. 9, Ch. 154, L. 1965; Sec. 4-139, R.C.M. 1947; amd. and redes. 4-1-205 by Sec. 13, Ch. 387, L. 1975; R.C.M. 1947, 4-1-205(part); amd. Sec. 6, Ch. 68, L. 1987.**

Cross-References

Patient or inmate to be bona fide — penalty, 16-6-309.

Licensing and regulation of hospitals, Title 50, ch. 5.

Distribution to patients or inmates at state custodial institutions — misdemeanor, 53-1-103.

16-1-205. Local option. The electors of a county may, by approving an initiative as provided under 7-5-131 through 7-5-137, prohibit the sale and consumption of liquor or of all alcoholic beverages within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under Title 7, chapter 5, part 1.

History: **En. 4-1-206 by Sec. 112, Ch. 387, L. 1975; R.C.M. 1947, 4-1-206; amd. Sec. 392, Ch. 571, L. 1979; amd. Sec. 13, Ch. 20, L. 1985.**

Part 3

Department of Revenue Powers, Duties, and Limitations

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

16-1-301. Administration of code. The department shall have the powers and duties to administer the Montana Alcoholic Beverage Code, including the general control, management, and supervision of all state liquor stores.

History: **En. Sec. 4, Ch. 105, L. 1933; re-en. Sec. 2815.63, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, Ch. 243, L. 1947; amd. Sec. 1, Ch. 140, L. 1949; amd. Sec. 1, Ch. 183, L. 1951; Sec. 4-107, R.C.M. 1947; amd. and redes. 4-1-301 by Sec. 3, Ch. 387, L. 1975; R.C.M. 1947, 4-1-301.**

Cross-References

City and county licenses — fees, 16-4-503.

16-1-302. Functions, powers, and duties of department. The department has the following functions, duties, and powers:

(1) to buy, import, have in its possession for sale, and sell liquors and table wine;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities where state liquor stores are to be established throughout the state and the situation of the stores within these municipalities;

(4) to lease, furnish, and equip any building or land required to administer its duties under this code;

(5) to buy or lease plants and equipment necessary to administer its duties under this code;

(6) to employ store managers and other employees required to administer this code and to dismiss them, assign them their title, and define their respective duties and powers and to contract with the department of justice for investigative services or to contract for the services of experts and persons engaged in the practice of a profession, if appropriate;

(7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

(8) to grant and issue licenses under this code;

(9) to place special restrictions on the use of a particular license, which must be endorsed upon the face of the license, if the special restrictions are made pursuant to a hearing held in connection with the issuance of the license or if the special restrictions are agreed to by the licensee;

(10) without limiting or being limited by the foregoing, to do all things necessary to administer this code or rules.

History: En. Sec. 8, Ch. 105, L. 1933; re-en. Sec. 2815.67, R.C.M. 1935; amd. Sec. 3, Ch. 154, L. 1965; Sec. 4-112, R.C.M. 1947; amd. and redes. 4-1-302 by Sec. 5, Ch. 387, L. 1975; R.C.M. 1947, 4-1-302; amd. Sec. 6, Ch. 699, L. 1979; amd. Sec. 3, Ch. 156, L. 1991; amd. Sec. 2, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 in (1), at end, deleted "in the manner set forth in this code"; in (4) substituted "to administer its duties under" for "for the operation of"; in (5), after "equipment", substituted "necessary to administer its duties under" for "it may consider necessary and useful in carrying into effect the objects and purposes of"; in (6), after "managers and", deleted "also every officer, investigator, clerk, or", after "required" substituted "to administer" for "for the operation or carrying out of", after "them" deleted "fix their salaries or remuneration", and before "the services" inserted "contract with the department of justice for investigative services or to contract for"; in (10), after "things", substituted "necessary to administer" for "considered necessary or advisable by the department for the purpose of carrying into effect the provisions of" and after "rules" deleted "made under the provisions of this code"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

City and county licenses — fees, 16-4-503.

Pull tabs and other detachable openings prohibited, 75-10-302.

16-1-303. Department rules. (1) The department and the department of justice may make rules not inconsistent with this code necessary to efficiently administer this code.

(2) Rules made by the department may include but are not limited to the following:

(a) regulating the equipment and management of state stores and warehouses in which liquor or table wine is kept or sold and prescribing the books and records to be kept;

(b) prescribing the duties of department employees and regulating their conduct while in the discharge of their duties;

(c) governing the purchase of liquor and table wine and the furnishing of liquor and table wine to state stores;

(d) determining the classes, varieties, and brands of liquor and table wine to be kept for sale at any state store;

(e) prescribing the hours during which state liquor stores must be open for the sale of alcoholic beverages;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor and table wine kept for sale;

(g) prescribing forms to be used for the purpose of this code or the rules and the terms and conditions for permits and licenses issued and granted under this code;

(h) prescribing the form of records of purchase of liquor and table wine and the reports to be made to the department and providing for inspection of the records;

(i) prescribing the manner of giving and serving notices required by this code or the rules;

(j) prescribing the fees payable for permits and licenses issued under this code for which no fees are prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules;

(k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of alcoholic beverage licenses and the books and records to be kept and the returns to be made by the licensees;

(l) specifying and describing the place and the manner in which alcoholic beverages may be lawfully kept or stored;

(m) specifying and regulating the time when and the manner by which vendors and brewers may deliver alcoholic beverages under this code and the time when and the manner by which alcoholic beverages, under this code, may be lawfully conveyed or carried;

(n) governing the conduct, management, and equipment of any premises licensed to sell alcoholic beverages under this code;

(o) providing for the imposition and collection of taxes and making rules respecting returns, accounting, and payment of the taxes to the department.

(3) The department of justice may adopt rules to administer and implement its responsibilities under this title, including but not limited to rules providing for the inspection of licensed premises or premises where the sale of liquor has been proposed.

(4) Whenever this code provides that an act may be done if authorized by rules, the department, subject to the restrictions in subsection (1), may make rules respecting the act.

History: En. Sec. 9, Ch. 105, L. 1933; re-en. Sec. 2815.68, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1965; amd. Sec. 1, Ch. 154, L. 1965; Sec. 4-113, R.C.M. 1947; amd. and redes. 4-1-303 by Sec. 6, Ch. 387, L. 1975; R.C.M. 1947, 4-1-303; amd. Sec. 7, Ch. 699, L. 1979; amd. Sec. 1, Ch. 47, L. 1983; amd. Sec. 7, Ch. 68, L. 1987; amd. Sec. 3, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 in (1), near beginning after "department", inserted "and the department of justice" and after "necessary" deleted "for carrying out the provisions of"; in (2) substituted introductory clause concerning rules for former language that read: "Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared that the power of the department to make rules in the manner set out in that subsection shall extend to and include the following"; in (2)(b) substituted "department employees" for "employees of the liquor division"; in (2)(c), at end, deleted "established under this code"; in (2)(e), after "prescribing", deleted "subject to this code"; in (2)(h) substituted "department" for "division"; in (2)(k), at end, deleted "and providing for the inspection of such licensed premises"; in (2)(m), in two places after "time", deleted "and periods" and in two places, after "manner", deleted "methods, and means"; inserted (3) allowing the Department of Justice to adopt rules relating to its responsibilities under this title; substituted (4) concerning acts authorized by rule for former text that read: "Whenever it is provided in this code that any act, matter, or thing may be done if permitted or authorized by the rules or may be done in accordance with the rules or as provided by the rules, the department, subject to the restrictions set out in subsection (1) hereof, shall have the power to make rules respecting such act, matter, or thing"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Adoption and publication of administrative rules, 2-4-301.

City and county licenses — fees, 16-4-503.

16-1-304. Prohibited acts. (1) An employee of the department involved in the operation of the state warehouse or state liquor stores, the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages may not be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor or table wine, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee for the employee's own benefit or in a fiduciary capacity for some other person.

(2) An employee of the state may not solicit or receive directly or indirectly any commission, remuneration, or gift from any person or corporation selling or offering liquor or table wine for sale to the state pursuant to this code.

(3) A person selling or offering for sale to or purchasing liquor or table wine from the state may not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any member or employee of the state or to anyone on behalf of the member or employee.

(4) The prohibition contained in subsection (3) does not prohibit the state from receiving samples of liquor or table wine for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor or table wine to the state of Montana shall submit, without cost to the state prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of the merchandise to the state.

(b) When a brand of liquor or table wine has been accepted for testing by the state, the state shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The state shall maintain written records of all samples received. The records must show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the state's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) Liquor, wine, or other alcoholic beverage may not be withdrawn from the regular warehouse inventory or from the state liquor stores for any purpose other than sale at the prevailing state retail prices or for destroying damaged or defective merchandise. The state shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse or state store merchandise.

(6) The state may not require a company that manufactured, distilled, rectified, bottled, or processed and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to maintain minimum

amounts of liquor or wine in the state warehouse while the distiller or winery retains ownership of the product.

(7) The state may not require a company that bottled and sold less than 100,000 wine gallons of table wine nationwide in the previous calendar year to maintain minimum amounts of table wine in the state warehouse while the company retains ownership of the product.

History: En. Sec. 48, Ch. 105, L. 1933; re-en. Sec. 2815.107, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1965; amd. Sec. 1, Ch. 72, L. 1971; Sec. 4-153, R.C.M. 1947; amd. and redes. 4-1-304 by Sec. 18, Ch. 387, L. 1975; amd. Sec. 1, Ch. 496, L. 1977; R.C.M. 1947, 4-1-304; amd. Sec. 8, Ch. 699, L. 1979; amd. Sec. 1, Ch. 766, L. 1991; amd. Sec. 4, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 in (1) substituted "An employee of the department involved in the operation of the state warehouse or state liquor stores" for "No officer or employee of the liquor division, including those engaged in the sale of liquor at the various state liquor or table wine stores" and after "stores" inserted "the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages"; in (2), at beginning, substituted "An employee of the state may not" for "No member or employee of the division or any employee of the state may" and near end, after "state", deleted "or division"; in (3), after "from the state", deleted "liquor division" and after "employee of the" deleted "division, to any employee of the"; throughout (4) through (7) substituted references to the state for references to the Division and the Liquor Division; in (5), in first sentence after "stores", deleted "of the Montana liquor division"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Government employee standards of conduct, Title 2, ch. 2, parts 1 and 2.

16-1-305. Title to property and moneys — administrative expenses. All property, whether real or personal, all moneys acquired, administered, possessed, or received by the department, and all profits earned in the administration of this code shall be the property of the state. All expenses, debts, and liabilities incurred by the department in connection with the administration of this code shall be paid by the department from the moneys received by the department under such administration.

History: En. Sec. 91, Ch. 105, L. 1933; re-en. Sec. 2815.151, R.C.M. 1935; Sec. 4-226, R.C.M. 1947; amd. and redes. 4-1-306 by Sec. 40, Ch. 387, L. 1975; R.C.M. 1947, 4-1-306.

16-1-306. Revenue to be paid to state treasurer. Except as provided in 16-1-404, 16-1-405, 16-1-408, 16-1-410, and 16-1-411, all fees, charges, taxes, and revenues collected by or under authority of the department must, in accordance with the provisions of 15-1-501(6), be deposited to the credit of the state general fund.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; re-en. Sec. 2815.50, R.C.M. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949; amd. Sec. 20, Ch. 249, L. 1967; amd. Sec. 3, Ch. 296, L. 1969; amd. Sec. 3, Ch. 421, L. 1971; Sec. 4-347, R.C.M. 1947; amd. and redes. 4-1-407 by Sec. 72, Ch. 387, L. 1975; amd. Sec. 1, Ch. 286, L. 1977; R.C.M. 1947, 4-1-407; amd. Sec. 54, Ch. 370, L. 1987; amd. Sec. 20, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 after "department" substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall" and after "deposited" deleted "with the state treasurer"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Part 4
Taxation of Alcoholic Beverages

Part Cross-References

Resort community tax, 7-6-4461 through 7-6-4467.

16-1-401. Liquor excise tax. (1) The department shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of:

(a) 16% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 13.8% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The department shall retain the amount of the excise tax received in a separate account and shall, in accordance with the provisions of 15-1-501(6), deposit, to the credit of the general fund, the sums collected and received not later than the 10th day of each month.

History: En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939; amd. Sec. 1, Ch. 180, L. 1957; Approved at referendum, Nov. 4, 1958; Sec. 4-417, R.C.M. 1947; amd. and redes. 4-1-403 by Sec. 94, Ch. 387, L. 1975; R.C.M. 1947, 4-1-403; amd. Sec. 1, Ch. 690, L. 1985; amd. Sec. 21, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 near middle of (2), after "shall", inserted "in accordance with the provisions of 15-1-501(6)" and after "deposit" deleted "with the state treasurer"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

16-1-402. Payment of excise tax by carriers. (1) Every airline or railroad operating in the state of Montana and selling liquor purchased outside this state for consumption within this state shall pay to the department the excise taxes and state markup which would be applicable to such liquor if purchased from the state liquor store.

(2) The amount of such excise taxes and state markup payable shall be determined by multiplying the following factors:

(a) the average liquor used per departure;

(b) the number of departures from Montana on which liquor is served;

(c) the ratio of Montana revenue passenger miles to system revenue passenger miles; and

(d) the applicable excise tax and state markup rates.

(3) From said product, the carrier shall subtract the amount of excise taxes and state markup on purchases of liquor made within this state.

History: En. 4-4-110 by Sec. 115, Ch. 387, L. 1975; R.C.M. 1947, 4-4-110.

16-1-403. Excise tax accounting methods — report forms. (1) The method provided in 16-1-402 shall be presumed to determine fairly and correctly the liquor purchased outside this state and sold for consumption within this state. Any carrier aggrieved by the application of the method may petition the department for use of some other method. Thereupon, if the department finds that the application of the method will be unjust to the carrier, it may allow the use of the method petitioned for by the carrier or may use such other method as will fairly reflect the liquor purchased outside this state and served for consumption within this state.

(2) The department shall prescribe report forms which shall be used by the carriers in reporting their sales and computing their liability for excise taxes and markup. Report forms shall be filed and payment of excise taxes and state markup shall be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup shall be made not later than the last day of the month immediately following the close of each quarterly period.

History: En. 4-4-111 by Sec. 116, Ch. 387, L. 1975; R.C.M. 1947, 4-4-111; amd. Sec. 3, Ch. 5, L. 1979.

16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. Thirty percent of these revenues are statutorily appropriated, as provided in 17-7-502, to the department and must, in accordance with the provisions of 15-1-501(6), be allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (3). Four and one-half percent of these revenues are statutorily appropriated, as provided in 17-7-502, and must, in accordance with the provisions of 15-1-501(6), be allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes. The remaining revenues must, in accordance with the provisions of 15-1-501(6), be deposited in the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism. In the case of purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regulations as are necessary to appor-

tion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405. That proportion of the license tax is statutorily appropriated, as provided in 17-7-502, to the department, which shall pay quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501(6), to be allocated to the incorporated cities and towns of the county.

(3) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns must be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns must be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

(4) The license tax proceeds that are allocated to the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism must be credited quarterly to the department of corrections and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder must be distributed as provided in 53-24-206.

History: En. Sec. 1, Ch. 217, L. 1957; amd. Sec. 1, Ch. 153, L. 1969; amd. Sec. 17, Ch. 302, L. 1974; Sec. 4-240, R.C.M. 1947; amd. and redes. 4-1-401 by Sec. 44, Ch. 387, L. 1975; amd. Sec. 8, Ch. 414, L. 1977; R.C.M. 1947, 4-1-401; amd. Sec. 6, Ch. 711, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 690, L. 1985; amd. Sec. 13, Ch. 703, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 22, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 in fifth, sixth, seventh, and ninth sentences of (2) inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Cross-References

Utilization of tax proceeds used for alcoholism programs, 53-24-108.

16-1-405. Use of license tax proceeds. The license tax moneys when so apportioned shall be deposited to the credit of the general funds of said incorporated cities, towns, and counties and shall be expended by said incorporated cities, towns, and counties for law enforcement and the regulation and control of the sale of alcoholic beverages and the use thereof.

History: En. Sec. 2, Ch. 217, L. 1957; Sec. 4-241, R.C.M. 1947; redes. 4-1-402 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-1-402; amd. Sec. 8, Ch. 68, L. 1987.

16-1-406. Tax on beer. A tax of $3 per barrel of 31 gallons is hereby levied and imposed on each and every barrel of beer sold in Montana by any wholesaler, which said tax shall be due at the end of each month from said wholesaler upon any such beer so sold by him during that month. As to any beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons, the quantity content shall be ascertained and computed by the department in determining the amount of tax due.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.29, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971; amd. Sec. 18, Ch. 302, L. 1974; Sec. 4-324, R.C.M. 1947; redes. 4-1-404 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 9, Ch. 414, L. 1977; R.C.M. 1947, 4-1-404(part); amd. Sec. 1, Ch. 172, L. 1987.

16-1-407. Repealed. Sec. 3, Ch. 172, L. 1987.

History: En. 4-1-405 by Sec. 113, Ch. 387, L. 1975; R.C.M. 1947, 4-1-405.

16-1-408. Additional tax. An additional tax of $1.30 per barrel is levied and imposed as provided by 16-1-406. One dollar of the additional tax must, in accordance with the provisions of 15-1-501(6), be deposited, notwithstanding 16-1-306 and 16-1-410 or any other provision, with the state treasurer to the credit of the department of corrections and human services each quarter for the treatment, rehabilitation, and prevention of alcoholism as approved by the state, and 30 cents of the additional tax must be deposited in the general fund.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.29, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971; amd. Sec. 18, Ch. 302, L. 1974; Sec. 4-324, R.C.M. 1947; redes. 4-1-404 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 9, Ch. 414, L. 1977; R.C.M. 1947, 4-1-404(part); amd. Sec. 1, Ch. 721, L. 1985; amd. Sec. 2, Ch. 172, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 23, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 near beginning of second sentence inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Cross-References

Utilization of tax proceeds used for alcoholism programs, 53-24-108.

16-1-409. Failure to make beer tax returns — penalties. (1) If any brewer or wholesaler subject to the payment of the tax provided for in 16-1-406 and 16-1-408 fails, neglects, or refuses to make any return required by this code or fails to make payment of the tax within the time herein provided, the department shall, after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and, from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of tax due the state from the delinquent brewer or wholesaler.

(2) The department shall add to the amount of tax due a penalty of 5% for the first failure, willful neglect, or refusal; 10% for the second; 15% for the third; and 25% for the fourth and each subsequent failure, neglect, or refusal.

(3) The penalty provided for in subsection (2) is in addition to the 5% penalty provided for nonpayment of the tax within the time provided.

(4) The tax and penalties bear interest at the rate of 1% per month from the date returns should have been made and the tax paid.

(5) The department shall then proceed to collect the tax with penalties and interest. Upon request of the department, it is the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the tax.

(6) If all or part of the tax imposed upon a brewer or wholesaler by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed or recorded.

(7) No action shall be maintained to enjoin the collection of the tax or any part thereof.

(8) Any tax owed by a brewer or wholesaler under this code not paid within the time provided shall be delinquent, and a penalty of 5% shall be added thereto. The tax and penalty bear interest at the rate of 1% per month from the date of delinquency until paid. Any brewer or wholesaler who fails, neglects, or refuses to make the return to the department provided for in 16-3-211 or 16-3-231 or refuses to allow the examination as provided for in 16-3-211 or 16-3-231 or fails to make an accurate return according to the manner prescribed is guilty of a misdemeanor and upon conviction shall be fined in an amount not exceeding $1,000.

History: (1) thru (6)En. Sec. 3, Ch. 220, L. 1939; Sec. 4-325, R.C.M. 1947; amd. and redes. 4-3-217 by Sec. 60, Ch. 387, L. 1975; Sec. 4-3-217, R.C.M. 1947; (7)En. Sec. 16, Ch. 106, L. 1933; re-en. Sec. 2815.25, R.C.M. 1935; amd. Sec. 2, Ch. 220, L. 1939; Sec. 4-320, R.C.M. 1947; amd. and redes. 4-6-403 by Sec. 58, Ch. 387, L. 1975; Sec. 4-6-403, R.C.M. 1947; R.C.M. 1947, 4-3-217, 4-6-403; amd. Sec. 40, Ch. 439, L. 1981; amd. Sec. 19, Ch. 83, L. 1989.

16-1-410. *(Temporary)* **Tax revenue allocation.** (1) Subject to 16-1-422, all revenue received from taxes on beer under 16-1-406 and 16-1-408 over and above $1.50 per barrel of 31 gallons must, in accordance with the provisions of 15-1-501(6), be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of revenue who shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town must be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.

(2) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year.

16-1-410. *(Effective on receipt of taxes or fees for September 1993)* **Tax revenue allocation.** (1) All revenue received from taxes on beer under 16-1-406 and 16-1-408 over and above $1.50 per barrel of 31 gallons must, in accordance with the provisions of 15-1-501(6), be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of revenue who shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town must be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.

(2) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year.

History: En. 4-347.1 by Sec. 4, Ch. 421, L. 1971; Sec. 4-347.1, R.C.M. 1947; amd. and redes. 4-1-408 by Sec. 73, Ch. 387, L. 1975; R.C.M. 1947, 4-1-408; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 703, L. 1985; amd. Sec. 20, Ch. 83, L. 1989; amd. Sec. 23, Ch. 15, Sp. L. July 1992; amd. Sec. 1, Ch. 60, L. 1993; amd. Sec. 24, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 60 in (1), near middle of second sentence, substituted "department" for "state treasurer" and at end inserted "as adjusted by the most recent population estimates published by the U.S. bureau of the census"; inserted (2) regarding adjustment of population estimates; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 455 near beginning of first sentence, after "gallons", substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall" and near middle of second sentence substituted "department of revenue" for "state treasurer"; and made minor changes in style. Amendment effective April 21, 1993.

Applicability: Section 3, Ch. 60, L. 1993, provided: "[This act] applies to all beer and wine tax revenue recorded on or after July 1, 1993, regardless of when the tax obligation accrued."

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

16-1-411. *(Temporary)* **Tax on wine.** (1) A tax of 27 cents per liter is imposed on table wine imported by a table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor must be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department must be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) must, in accordance with the provisions of 15-1-501(6), be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 ⅓ cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 ⅓ cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The taxes computed and paid in accordance with 16-1-423, 16-2-301, and this section are the only taxes imposed by the state or any of its subdivisions, including cities and towns.

(5) The proceeds of the surtax imposed by 16-1-423 must be deposited in the state general fund.

(6) For purposes of this section "based on population" means:

(a) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-410(2); and

(b) for cities, the distribution described in 16-1-410.

16-1-411. *(Effective on receipt of taxes or fees for September 1993)* **Tax on wine.** (1) A tax of 27 cents per liter is imposed on table wine imported by a table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor must be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department must be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) must, in accordance with the provisions of 15-1-501(6), be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 ⅓ cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 ⅓ cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section "based on population" means:

(a) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-410(2); and

(b) for cities, the distribution described in 16-1-410.

History: En. Sec. 9, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 5, Ch. 699, L. 1979; amd. Sec. 1, Ch. 219, L. 1981; amd. Sec. 1, Ch. 241, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 15, Ch. 703, L. 1985; amd. Sec. 2, Ch. 721, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 24, Ch. 15, Sp. L. July 1992; amd. Sec. 2, Ch. 60, L. 1993; amd. Sec. 25, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 60 inserted definition of based on population; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 455 in (3) substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall"; and made minor changes in style. Amendment effective April 21, 1993.

A style change in (4) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Applicability: Section 3, Ch. 60, L. 1993, provided: "[This act] applies to all beer and wine tax revenue recorded on or after July 1, 1993, regardless of when the tax obligation accrued."

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

16-1-412 through 16-1-420 reserved.

16-1-421. *(Temporary)* **Surtax on liquor — distribution.** (1) In addition to the amount of tax liability determined under 16-1-401 through 16-1-403, each person subject to taxation under 16-1-401 through 16-1-403 shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must, in accordance with the provisions of 15-1-501(6), be deposited to the credit of the state general fund.

History: En. Sec. 20, Ch. 15, Sp. L. July 1992; amd. Sec. 26, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 in (2) inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Applicability — Termination: Section 39(5), Ch. 15, Sp. L. July 1992, provided that this section applies for 1 calendar year to tax or fee liabilities for months beginning after August 14, 1992. This section terminates upon receipt of taxes or fees for the final month of applicability.

16-1-422. *(Temporary)* **Surtax on beer — distribution.** (1) After the amount of tax liability has been determined under 16-1-406 and 16-1-408, each wholesaler subject to taxation under this part shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must, in accordance with the provisions of 15-1-501(6), be deposited to the credit of the state general fund.

History: En. Sec. 21, Ch. 15, Sp. L. July 1992; amd. Sec. 27, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 in (2) inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Applicability — Termination: Section 39(5), Ch. 15, Sp. L. July 1992, provided that this section applies for 1 calendar year to tax or fee liabilities for months beginning after August 14, 1992. This section terminates upon receipt of taxes or fees for the final month of applicability.

16-1-423. *(Temporary)* **Surtax on table wine — distribution.** (1) In addition to the amount of tax liability determined under 16-1-411, each table wine distributor subject to taxation under this part shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must, in accordance with the provisions of 15-1-501(6), be deposited to the credit of the state general fund.

History: En. Sec. 22, Ch. 15, Sp. L. July 1992; amd. Sec. 28, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 in (2) inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Applicability — Termination: Section 39(5), Ch. 15, Sp. L. July 1992, provided that this section applies for 1 calendar year to tax or fee liabilities for months beginning after August 14, 1992. This section terminates upon receipt of taxes or fees for the final month of applicability.

CHAPTER 2

STATE LIQUOR STORES

Part 1 — Operation of Stores

16-2-101. Establishment and closure of state liquor stores — agency franchise agreement — kinds and prices of liquor and table wine.
16-2-102. Repealed.
16-2-103. Duplicate invoices of sales required.
16-2-104. Hours.
16-2-105. Place and time of selling liquor.
16-2-106. Purchase price in advance.
16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises of state store.
16-2-108. Disposition of money received.

Part 2 — Price of Liquor

16-2-201. Reduction for quantity sales of liquor.
16-2-202. Repealed.
16-2-203. Department sales to licensees.

Part 3 — Sale of Table Wine

16-2-301. Retail selling price on table wine — tax on certain table wine.
16-2-302. State distribution.
16-2-303. Department prohibited from engaging in unfair competition.

Part 1
Operation of Stores

16-2-101. Establishment and closure of state liquor stores — agency franchise agreement — kinds and prices of liquor and table wine. (1) (a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor and table wine in accordance with the provisions of this code and the rules adopted under this code.

(b) The department shall enter into an agency franchise agreement or employ the necessary help to operate the stores and shall designate the duties to be performed by the agent or employees.

(c) Once established, a store may not be closed, converted to an agency store, or sold by the department unless:

(i) the store is returning less than a 10% profit to the state; or

(ii) the closure or sale is approved by the legislature.

(2) The department may from time to time fix the prices at which the various classes, varieties, and brands of liquor and table wine may be sold, and prices must be the same at all state stores.

(3) (a) State liquor stores must be considered for closure, conversion, or sale only when a store lease expires. Prior to the expiration of a lease, the department may conduct a financial profitability analysis using the criteria in subsection (1)(c)(i). In computing profit levels of state-operated stores, the costs of the licensing bureau and the legal and enforcement division, other than inspection costs directly attributable to liquor stores, may not be included as expenses. The revenue oversight committee must be informed of all plans for conversion, sale, or closure of state liquor stores.

(b) Agency stores may not be located in or adjacent to grocery stores in communities with populations over 3,000. This provision is applicable only to agency agreements entered into after May 11, 1987.

(4) Agency stores must receive commissions based on adjusted gross sales as follows:

(a) a 10% commission for agencies in communities with less than 3,000 in population;

(b) a commission established by competitive bidding for agencies in communities with 3,000 or more in population.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and may be renewed every 10 years if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement;

(c) require the agent to provide performance security in an amount equal to the average monthly value of inventory at cost based on the most recent 12-month period of inventory value at the agency store location or, if a 12-month history is not available, the department's estimate of the average value; and

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) The commission percentage that the department pays the agent under an agency franchise agreement may be reviewed every 5 years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(a) the agent's commission percentage is less than the average; and

(b) all the requirements of the agency franchise agreement have been satisfactorily performed.

(7) The liability insurance and performance security requirements may be reviewed every 5 years at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the loss of state assets or from the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of insurance coverage may not be less than the minimum requirements of the department of administration.

(8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term and except for a commission percentage that may be negotiated as provided in subsection (8)(b), changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.

(b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the department determines that an adjustment of the commission percentage paid to the agent is in the best interests of the state, the department shall notify the agent of that determination.

(c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.

(d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this chapter with a person who accepted the adjusted commission percentage.

(e) If the agent exercises the preference right and believes the adjusted commission percentage to be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to be inadequate or not in the state's best interests. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the adjusted commission percentage is inadequate or not in the state's best interests. The department may, after the hearing, adjust the commission percentage if the agent shows that the commission percentage is inadequate or not in the best interests of the state. If the department increases the commission percentage rate, the department shall set forth its findings and conclusions in writing and inform the agent and the other persons who offered to enter into an agency agreement at the adjusted commission rate.

(9) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement or in the following cases:

(a) Except in the case of suspected theft or unauthorized use of state assets, the department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the agency franchise agreement termination and request a hearing within 30 days. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(b) If an agent is suspected of theft or unauthorized use of state assets, the department may terminate the agency franchise agreement and retrieve its assets immediately. If an agency franchise agreement is terminated, the agent may contest the agency franchise agreement termination and request a hearing within 30 days of the department's retrieval of assets. The agency store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

(10) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(11) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(12) An agency agreement in effect on March 30, 1993, must be converted upon request of the agent and approval of the department to a 10-year agency franchise agreement pursuant to subsections (5) through (11) without competitive bids or proposals.

(13) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%.

History: **En. Sec. 10, Ch. 105, L. 1933; re-en. Sec. 2815.69, R.C.M. 1935; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1,**

Ch. 62, L. 1971; Sec. 4-114, R.C.M. 1947; amd. and redes. 4-2-101 by Sec. 7, Ch. 387, L. 1975; R.C.M. 1947, 4-2-101(part); amd. Sec. 1, Ch. 157, L. 1979; amd. Sec. 1, Ch. 2, Sp. L. March 1986; amd. Sec. 9, Ch. 68, L. 1987; amd. Sec. 1, Ch. 648, L. 1987; amd. Sec. 2, Ch. 228, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 228 in (1)(b), after "agency", inserted "franchise"; inserted (5) relating to required provisions in agency franchise agreements; inserted (6) relating to commission percentage; inserted (7) relating to liability insurance and performance security requirements; inserted (8) relating to renewal agreement terms and procedure; inserted (9) relating to termination of the agreement by the Department; inserted (10) relating to termination by mutual agreement; inserted (11) relating to assignment of an agreement; inserted (12) relating to conversion of agreements in effect on March 30, 1993; and made minor changes in style. Amendment effective March 30, 1993.

Continuity of Agreements Existing on Effective Date: Section 4, Ch. 228, L. 1993, provided: "An existing agency agreement that terminates after [the effective date of this act] [March 30, 1993] but before it is converted to an agency franchise agreement is automatically extended until an agency franchise agreement is signed or for 6 months from [the effective date of this act], whichever occurs first."

Applicability: Section 6, Ch. 228, L. 1993, provided: "[This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act]." Effective March 30, 1993.

16-2-102. Repealed. Sec. 4, Ch. 47, L. 1983.

History: En. Sec. 14, Ch. 105, L. 1933; re-en. Sec. 2815.73, R.C.M. 1935; Sec. 4-119, R.C.M. 1947; redes. 4-2-102 by Sec. 120, Ch. 387, L. 1975; amd. Sec. 2, Ch. 496, L. 1977; R.C.M. 1947, 4-2-102.

16-2-103. Duplicate invoices of sales required. (1) The state liquor store shall, upon each sale of liquor or table wine to any licensee, issue a duplicate invoice of the liquor or table wine purchased, as provided by the department, a copy of which shall be delivered to the licensee and one copy retained at such store.

(2) The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of liquor or table wine purchased, the price paid therefor, the name of the licensee, and the number of the license, with such other information as may be required by the department.

(3) The licensee shall keep and retain his duplicate invoice of all purchases made by him from the state liquor store, which shall at all times be subject to inspection by the duly authorized officers, agents, and employees of the department.

History: En. Sec. 16, Ch. 84, L. 1937; Sec. 4-418, R.C.M. 1947; amd. and redes. 4-2-205 by Sec. 95, Ch. 387, L. 1975; R.C.M. 1947, 4-2-205; amd. Sec. 10, Ch. 68, L. 1987.

16-2-104. Hours. (1) State liquor stores shall be and remain open during such period of the day as the department shall deem advisable. The stores shall be closed for the transaction of business on legal holidays and between the close of normal business Saturday p.m. up to the opening of normal business Tuesday a.m. as set by department rule.

(2) No sale or delivery of liquor or table wine shall be made on or from the premises of any state liquor store nor shall any store be open for the sale of liquor or table wine:

(a) on any holiday recognized by state law;

(b) during such other period and on such other days as the department may direct.

History: (1)En. Sec. 10, Ch. 105, L. 1933; re-en. Sec. 2815.69, R.C.M. 1935; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1,

Ch. 62, L. 1971; Sec. 4-114, R.C.M. 1947; amd. and redes. 4-2-101 by Sec. 7, Ch. 387, L. 1975; Sec. 4-2-101, R.C.M. 1947; (2)En. Sec. 16, Ch. 105, L. 1933; re-en. Sec. 2815.75, R.C.M. 1935; amd. Sec. 5, Ch. 30, L. 1937; amd. Sec. 2, Ch. 62, L. 1971; Sec. 4-121, R.C.M. 1947; amd. and redes. 4-2-104 by Sec. 11, Ch. 387, L. 1975; Sec. 4-2-104, R.C.M. 1947; R.C.M. 1947, 4-2-101(part), 4-2-104; amd. Sec. 11, Ch. 68, L. 1987.

Cross-References

Legal holidays in Montana, 1-1-216.

16-2-105. Place and time of selling liquor. No store manager and no person acting as the clerk or servant of or in any capacity for any manager shall sell liquor in any other place or at any other time or otherwise than as authorized by this code and the rules.

History: En. Sec. 47, Ch. 105, L. 1933; re-en. Sec. 2815.106, R.C.M. 1935; Sec. 4-152, R.C.M. 1947; amd. and redes. 4-2-105 by Sec. 17, Ch. 387, L. 1975; R.C.M. 1947, 4-2-105.

16-2-106. Purchase price in advance. A store manager may sell to any person such liquor and table wine as that person is entitled to purchase in conformity with the provisions of this code and the rules made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price.

History: En. Sec. 12, Ch. 105, L. 1933; re-en. Sec. 2815.71, R.C.M. 1935; amd. Sec. 4, Ch. 154, L. 1965; amd. Sec. 1, Ch. 162, L. 1969; Sec. 4-116, R.C.M. 1947; amd. and redes. 4-2-106 by Sec. 8, Ch. 387, L. 1975; R.C.M. 1947, 4-2-106; amd. Sec. 12, Ch. 68, L. 1987.

16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises of state store. No officer, clerk, or agent of the department employed in a state store shall allow any alcoholic beverage container to be opened on the premises of a state store or allow any alcoholic beverage to be consumed on the premises of a state store, nor shall any person open an alcoholic beverage container or consume any alcoholic beverage on such premises.

History: En. Sec. 15, Ch. 105, L. 1933; re-en. Sec. 2815.74, R.C.M. 1935; Sec. 4-120, R.C.M. 1947; amd. and redes. 4-2-107 by Sec. 10, Ch. 387, L. 1975; R.C.M. 1947, 4-2-107; amd. Sec. 2, Ch. 47, L. 1983; amd. Sec. 13, Ch. 68, L. 1987.

16-2-108. Disposition of money received. All money received from the sale of liquor and table wine at the state liquor stores must be deposited in the enterprise fund in the state treasury to the credit of the department. The department may purchase liquor and table wine from money deposited to its account in the enterprise fund. The department shall pay from its account in the enterprise fund its administrative expenses, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the department may be a debt or claim against the state of Montana but must be payable by the department solely from funds derived from the operation of state liquor stores. The department shall pay into the state treasury to the credit of the enterprise fund the receipts from all taxes and license and permit fees collected by it. Taxes, license and permit fees, and the net proceeds from the operation of state liquor stores must be transferred to the general fund.

History: En. Sec. 94, Ch. 105, L. 1933; re-en. Sec. 2815.154, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1939; amd. Sec. 211, Ch. 147, L. 1963; Sec. 4-229, R.C.M. 1947; amd. and redes. 4-1-406 by Sec. 41, Ch. 387, L. 1975; amd. Sec. 1, Ch. 398, L. 1977; R.C.M. 1947, 4-1-406; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 14, Ch. 68, L. 1987; amd. Sec. 1, Ch. 225, L. 1989.

Part 2

Price of Liquor

16-2-201. Reduction for quantity sales of liquor. Reduction of 5% of the retail price of liquor sold at the state liquor store shall be made by the department for sales of liquor to any person purchasing liquor in unbroken case lots. No other reduction shall be made by the department for quantity sales of liquor.

History: En. Sec. 1, Ch. 185, L. 1943; amd. Sec. 1, Ch. 334, L. 1975; Sec. 4-117, R.C.M. 1947; amd. and redes. 4-2-201 by Sec. 9, Ch. 387, L. 1975; R.C.M. 1947, 4-2-201.

16-2-202. Repealed. Sec. 3, Ch. 690, L. 1985.

History: En. 4-114.1 by Sec. 1, Ch. 359, L. 1974; Sec. 4-114.1, R.C.M. 1947; redes. 4-2-202 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-2-202.

16-2-203. Department sales to licensees. The department may sell through its stores to licensees licensed under this code all kinds of liquor and table wine at the posted price thereof in the store in which the liquor and table wine are sold. All sales shall be upon a cash basis.

History: En. Sec. 14, Ch. 84, L. 1937; Sec. 4-416, R.C.M. 1947; amd. and redes. 4-2-204 by Sec. 93, Ch. 387, L. 1975; amd. Sec. 3, Ch. 496, L. 1977; R.C.M. 1947, 4-2-204(part); amd. Sec. 10, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 15, Ch. 68, L. 1987.

Part 3

Sale of Table Wine

16-2-301. Retail selling price on table wine — tax on certain table wine. (1) The retail selling price at which table wine is sold either by the department, through a state employee-operated store, or by a commission agent who was appointed before April 30, 1987, including subsequent renewals of such appointment, and who elects to order table wine from the department is computed by adding to the statewide weighted average cost of table wine the tax and state markup as designated by the department.

(2) The retail selling price at which table wine is sold by a commission agent appointed by the department after May 1, 1987, is as determined by the agent.

(3) In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on table wine sold by a table wine distributor to an agent as described in subsection (2). This additional tax must be paid to the department by the distributor in the same manner as the tax under 16-1-411 is paid. The department shall deposit the tax paid under this section in the general fund.

History: En. Sec. 9, Ch. 699, L. 1979; amd. Sec. 1, Ch. 629, L. 1987.

16-2-302. State distribution. The department may import and distribute one or more named table wines to one or more designated state employee-operated liquor stores or agency stores appointed on or before April 30, 1987, including subsequent renewals of such appointments, in the same manner as if the wine contained more than 16% alcohol by volume.

History: En. Sec. 10, Ch. 699, L. 1979; amd. Sec. 16, Ch. 68, L. 1987; amd. Sec. 2, Ch. 629, L. 1987.

16-2-303. Department prohibited from engaging in unfair competition. (1) The department in engaging in the retail sale of table wine is subject to the provisions of Title 30, chapter 14, parts 1 and 2, except those provisions relating to enforcement and penalties.

(2) A person aggrieved by a violation of this section by the department may maintain an action to enjoin the alleged violation and for the recovery of damages in the district court of the district where the conduct complained of occurred or where the department's principal office is located.

History: En. Sec. 11, Ch. 699, L. 1979.

CHAPTER 3

CONTROL OF LIQUOR, BEER, AND WINE

Part 1 — Official Seal and Other Controls

16-3-101. Alcoholic beverages dispensed only in accordance with code.
16-3-102. Repealed.
16-3-103. Unlawful sales solicitation or advertising — exceptions.
16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler.
16-3-105. Restrictions on alcoholic beverages in hotels.
16-3-106. Conveyance of liquors, table wines, and beer — opening alcoholic beverages during transit forbidden.
16-3-107. Resident representatives required.

Part 2 — Regulation of Brewers, Beer Importers, and Beer Wholesalers

16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than prescribed unlawful.
16-3-202. Beer sale by department prohibited.
16-3-203 through 16-3-210 reserved.
16-3-211. Monthly report of brewer or beer importer — inspection of books and premises.
16-3-212. Brewers' or beer importers' sales to wholesalers lawful.
16-3-213. Brewers or beer importers not to retail beer — original package and taproom exceptions.
16-3-214. Beer sales by brewers — taproom exception.
16-3-215 and 16-3-216 reserved.
16-3-217. Purposes.
16-3-218. "Distribute" defined.
16-3-219. Dock sales restricted.
16-3-220. Wholesalers' service obligations — applicability.
16-3-221. Illegal acts by brewers or beer importers.
16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises.
16-3-223. Transfer of wholesaler's interest in business.
16-3-224. Contractual or franchise relationship — existence by actions.
16-3-225. Injunction to prevent franchise cancellation.
16-3-226. Brewer-wholesaler or beer importer-wholesaler agreements filed with department.
16-3-227 through 16-3-229 reserved.
16-3-230. Out-of-state beer required to be shipped to wholesaler.
16-3-231. Monthly report of wholesaler.
16-3-232. Beer sales by wholesaler.
16-3-233. Sales to public by wholesaler unlawful.
16-3-234. Consumption of beer on wholesalers' premises unlawful.
16-3-235. Carriers' reports of beer transported.
16-3-236 through 16-3-240 reserved.
16-3-241. Furnishing of fixtures or advertising matter to retailers by brewers, beer importers, and wholesalers unlawful — exceptions.
16-3-242. Financial interest in retailers prohibited.

16-3-243. Seven-day credit limitation.
16-3-244. Beer advertising limitations.

Part 3 — Retail Sales Restrictions

16-3-301. Unlawful purchases, transfers, sales, or deliveries — presumption of legal age.
16-3-302. Sale by retailer for consumption on premises.
16-3-303. Sale of beer by retailer for consumption off premises.
16-3-304. Closing hours for licensed retail establishments.
16-3-305. Sale of alcoholic beverages during closed hours unlawful — lawful business need not be closed.
16-3-306. Proximity to churches and schools restricted.
16-3-307. Sale of liquor at less than posted price unlawful.
16-3-308. Refilling of liquor bottles prohibited.
16-3-309. Sales prohibited by ordinance.
16-3-310. Lapse of license for nonuse.
16-3-311. Suitable premises for licensed retail establishments.

Part 4 — Sale of Table Wine

16-3-401. Short title — public policy — purpose.
16-3-402. Importation of wine — records.
16-3-403. To whom table wine distributor may sell.
16-3-404. Monthly report of table wine distributor.
16-3-405. Carriers' reports of table wine transported.
16-3-406. Financial interest in retailers prohibited.
16-3-407 through 16-3-410 reserved.
16-3-411. Domestic winery.
16-3-412 through 16-3-414 reserved.
16-3-415. Definitions.
16-3-416. Table wine distributor provisions.
16-3-417. Supplier provisions.
16-3-418. Dual appointments — equal support — alternate supplier.
16-3-419. Suppliers' prohibitions.
16-3-420. Applicability.
16-3-421. Injunction.

Part 1
Official Seal and Other Controls

16-3-101. Alcoholic beverages dispensed only in accordance with code. No brewer, beer importer, distiller, or manufacturer of alcoholic beverages shall, within the state, by himself, his clerk, servant, or agent, give to any person any alcoholic beverage except as may be permitted by and in accordance with the rules made under this code.

History: En. Sec. 46, Ch. 105, L. 1933; re-en. Sec. 2815.105, R.C.M. 1935; Sec. 4-151, R.C.M. 1947; redes. 4-3-101 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-101; amd. Sec. 2, Ch. 19, L. 1985; amd. Sec. 17, Ch. 68, L. 1987.

Cross-References

Rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

16-3-102. Repealed. Sec. 4, Ch. 47, L. 1983.

History: En. Sec. 53, Ch. 105, L. 1933; re-en. Sec. 2815.112, R.C.M. 1935; Sec. 4-158, R.C.M. 1947; amd. and redes. 4-3-102 by Sec. 21, Ch. 387, L. 1975; R.C.M. 1947, 4-3-102; amd. Sec. 11, I.M. No. 81, app. Nov. 7, 1978.

16-3-103. Unlawful sales solicitation or advertising — exceptions. (1) No person within the state shall:

(a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless permitted to do so under rules that shall be promulgated by the department to govern such activities;

(b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the case of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with such rules.

(2) This section does not apply to:

(a) the department, any act of the department, any state liquor store;

(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of employment as such agent, operator, or employee; or

(c) the sale and serving of beer in the grandstand and bleacher area of a county fairground or public sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant to 16-4-111 or 16-4-204.

History: En. Sec. 65, Ch. 105, L. 1933; re-en. Sec. 2815.124, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1974; amd. Sec. 1, Ch. 274, L. 1975; Sec. 4-170, R.C.M. 1947; redes. 4-3-103 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-103; amd. Sec. 1, Ch. 134, L. 1985; amd. Sec. 1, Ch. 180, L. 1987; amd. Sec. 3, Ch. 599, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 599 at end of (2)(c) inserted reference to 16-4-111; and made minor changes in style. Amendment effective May 4, 1993.

Cross-References

Rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler. It shall be unlawful for the operator of any common carrier or its employees to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a duly licensed brewer, beer importer, or wholesaler.

History: En. Sec. 37, Ch. 106, L. 1933; re-en. Sec. 2815.41, R.C.M. 1935; Sec. 4-338, R.C.M. 1947; amd. and redes. 4-3-104 by Sec. 67, Ch. 387, L. 1975; R.C.M. 1947, 4-3-104; amd. Sec. 3, Ch. 19, L. 1985.

Cross-References

Regulation of carriers of property, Title 69, ch. 11, part 4.

16-3-105. Restrictions on alcoholic beverages in hotels. Except in the case of alcoholic beverages kept or consumed in premises for which a license has been granted under the law and which form a part of a hotel, no person shall:

(1) keep or consume alcoholic beverages in any part of a hotel other than a private guest room;

(2) keep or have any alcoholic beverage in any room in a hotel unless he is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room.

History: En. Sec. 64, Ch. 105, L. 1933; re-en. Sec. 2815.123, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1974; Sec. 4-169, R.C.M. 1947; redes. 4-3-105 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-105; amd. Sec. 18, Ch. 68, L. 1987.

Cross-References

Licensing and regulation of hotels and motels, Title 50, ch. 51.

16-3-106. Conveyance of liquors, table wines, and beer — opening alcoholic beverages during transit forbidden. (1) It shall be lawful to carry or convey liquor or table wine to any state store and to and from any warehouse or depot established by the department for the purposes of this code, and when permitted to do so by this code and the rules made thereunder and in accordance therewith, it shall be lawful for any common carrier or other person to carry or convey liquor or table wine sold by a vendor from a state store or beer, when lawfully sold by a brewer, from the premises wherein such beer was manufactured or from premises where the beer may be lawfully kept and sold to any place to which the same may be lawfully delivered under this code and the rules made thereunder.

(2) No common carrier or any other person shall open, break, or allow to be opened or broken any package or vessel containing an alcoholic beverage or drink or use or allow to be drunk or used any alcoholic beverage therefrom while being carried or conveyed.

History: En. Sec. 17, Ch. 105, L. 1933; re-en. Sec. 2815.76, R.C.M. 1935; Sec. 4-122, R.C.M. 1947; amd. and redes. 4-2-103 by Sec. 12, Ch. 387, L. 1975; R.C.M. 1947, 4-2-103; amd. Sec. 19, Ch. 68, L. 1987.

Cross-References

Rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

16-3-107. Resident representatives required. (1) For the purposes of this section, "vendor" means a person, partnership, association, or corporation that sells liquor to the department.

(2) A vendor who desires to promote the sale of his product in the state shall employ one representative and may employ an additional representative to promote the sale of the vendor's product. A representative must be or become after employment a resident of the state. If a vacancy occurs in a representative position, the vendor shall fill the position within 60 days after the vacancy occurs.

History: En. Sec. 1, Ch. 293, L. 1987.

Part 2

Regulation of Brewers, Beer Importers, and Beer Wholesalers

16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than prescribed unlawful. It shall be unlawful to manufacture, import, sell or dispose of, or possess for the purpose of sale beer of any kind or character of an alcoholic content greater than herein prescribed or other than in the manner permitted by this code.

History: En. Sec. 5, Ch. 106, L. 1933; re-en. Sec. 2815.14, R.C.M. 1935; Sec. 4-309, R.C.M. 1947; amd. and redes. 4-3-201 by Sec. 49, Ch. 387, L. 1975; R.C.M. 1947, 4-3-201; amd. Sec. 4, Ch. 19, L. 1985.

Cross-References

"Beer" defined, 16-1-106.

16-3-202. Beer sale by department prohibited. The sale of beer by the department is hereby prohibited.

History: En. Sec. 4, Ch. 106, L. 1933; re-en. Sec. 2815.13, R.C.M. 1935; amd. Sec. 1, Ch. 89, L. 1937; amd. Sec. 1, Ch. 186, L. 1947; Sec. 4-308, R.C.M. 1947; amd. and redes. 4-3-202 by Sec. 48, Ch. 387, L. 1975; R.C.M. 1947, 4-3-202.

16-3-203 through 16-3-210 reserved.

16-3-211. Monthly report of brewer or beer importer — inspection of books and premises. Every brewer and every beer importer licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form as shall be prescribed by the department, make an exact return to the department of the amount of beer manufactured or imported by him and the amount sold by him in the previous month and of his inventory. The department shall have the right at any time to make an examination of any brewer's or beer importer's books and of his premises and otherwise check the accuracy of any such return or to check the alcoholic content of beer manufactured or imported by him.

History: En. Sec. 7, Ch. 106, L. 1933; re-en. Sec. 2815.16, R.C.M. 1935; Sec. 4-311, R.C.M. 1947; amd. and redes. 4-3-203 by Sec. 51, Ch. 387, L. 1975; R.C.M. 1947, 4-3-203; amd. Sec. 5, Ch. 19, L. 1985.

Cross-References

Failure to make return — penalty, 16-1-409.

16-3-212. Brewers' or beer importers' sales to wholesalers lawful. It shall be lawful for any licensed brewer to sell or deliver beer manufactured by him to any licensed wholesaler. It shall be lawful for any licensed beer importer to sell or deliver beer imported by him to any licensed wholesaler.

History: En. Sec. 9, Ch. 106, L. 1933; amd. Sec. 3, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.18, R.C.M. 1935; Sec. 4-313, R.C.M. 1947; amd. and redes. 4-3-204 by Sec. 52, Ch. 387, L. 1975; R.C.M. 1947, 4-3-204; amd. Sec. 6, Ch. 19, L. 1985.

16-3-213. Brewers or beer importers not to retail beer — original package and taproom exceptions. It shall be unlawful for any brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises, it being the declared intention to prohibit brewers and beer importers from engaging in the retail dispensation of beer; provided, however, that this shall not be so construed as to prohibit breweries from making sale and delivery of beer manufactured by them, in original packages, at either wholesale or retail, or from providing, without charge, their products for consumption on their licensed premises.

History: En. Sec. 11, Ch. 106, L. 1933; re-en. Sec. 2815.20, R.C.M. 1935; Sec. 4-315, R.C.M. 1947; redes. 4-3-205 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-205; amd. Sec. 7, Ch. 19, L. 1985; amd. Sec. 1, Ch. 149, L. 1985.

16-3-214. Beer sales by brewers — taproom exception. (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery located in Montana to:

(i) a wholesaler;

(ii) any retail licensees who are entitled to purchase beer from a brewer under this code; or

(iii) the public; or

(b) provide, without charge, its own products for consumption on its licensed premises; or

(c) do any one or more of the acts of sale and delivery of beer.

(2) An additional license fee may not be imposed on a brewery providing, without charge, its own products on its licensed premises for consumption on the premises.

(3) This section does not prohibit a brewer located outside of Montana from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.22, R.C.M. 1935; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959; amd. Sec. 1, Ch. 296, L. 1969; amd. Sec. 1, Ch. 421, L. 1971; Sec. 4-317, R.C.M. 1947; amd. and redes. 4-3-206 by Sec. 53, Ch. 387, L. 1975; R.C.M. 1947, 4-3-206; amd. Sec. 2, Ch. 149, L. 1985; amd. Sec. 1, Ch. 721, L. 1991; amd. Sec. 1, Ch. 122, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 122 near beginning of (1), after "brewer", deleted "duly licensed as such by the United States of America"; and made minor changes in style. Amendment effective March 18, 1993.

Cross-References

Rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

16-3-215 and 16-3-216 reserved.

16-3-217. Purposes. The legislature finds and declares that the purposes of 16-3-218 through 16-3-226 are to assure continued interbrand competition in malt beverage sales through competing independent wholesalers and to assure breweries the ability to protect the reputations of their products through quality control arrangements.

History: En. Sec. 1, Ch. 61, L. 1987.

16-3-218. "Distribute" defined. As used in 16-3-219, 16-3-220, 16-4-103, and 16-4-108, "distribute" means to deliver beer or wine to a retailer's premises licensed to sell beer or table wine.

History: En. Sec. 3, Ch. 61, L. 1987.

16-3-219. Dock sales restricted. A beer wholesaler or a table wine distributor may not deliver beer or wine to a licensed retailer at any location other than the retailer's licensed premises, except that a retailer located within the territory for which a wholesaler has been appointed to distribute a brand may personally or through his employee obtain from the wholesaler's warehouse quantities of beer not exceeding three barrels in packaged or draft form. An all-beverages licensee may upon presentation of his license or a photocopy of his license personally obtain from any wholesaler's warehouse such quantities of beer as he and the wholesaler may agree to buy and sell.

History: En. Sec. 4, Ch. 61, L. 1987.

16-3-220. Wholesalers' service obligations — applicability. (1) A wholesaler appointed to distribute a brand of beer within a territory specified by agreement pursuant to 16-3-221(3) shall call on and offer that brand to at least 75% of the retailers within that territory at least every 3 weeks.

(2) If a retailer's account with a wholesaler is current as required under 16-3-243, the wholesaler may not refuse to sell the retailer any brand of beer for which the wholesaler has been appointed for the territory in which the retailer is located. The wholesaler shall offer to deliver the beer to such retailer at least every 3 weeks.

(3) This section applies to all beer distribution agreements entered into, assigned, or amended after July 1, 1986. It does not apply to a distribution agreement for a named brand entered into before July 1, 1986, but does not prohibit a brewer party to such an agreement from requiring the appointed wholesaler to fulfill similar service obligations in the territory.

History: En. Sec. 5, Ch. 61, L. 1987.

16-3-221. Illegal acts by brewers or beer importers. It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

(1) coerce, or attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action which would violate or tend to violate any of the laws of this state or any rules promulgated by the department;

(2) sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;

(3) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing herein shall prohibit the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; and

(4) cancel or terminate, except for just cause or in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into to sell beer manufactured by the brewer or imported by the beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving the classification was reasonable and not arbitrary. After July 1, 1974, the provisions of 16-3-221 through 16-3-226 shall be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer or beer importer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer importer.

History: En. 4-317.2 by Sec. 1, Ch. 322, L. 1974; Sec. 4-317.2, R.C.M. 1947; redes. 4-3-207 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-207; amd. Sec. 8, Ch. 19, L. 1985.

16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises. All contracts, agreements, or franchises between a brewer and a wholesaler or a beer importer and a wholesaler shall specifically set forth or contain the following:

(1) that the brewer or beer importer or any officer, agent, or representative of any brewer or beer importer and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer or beer importer to the retail licensees. Said territory will be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and may not be changed without the mutual consent of both the wholesaler and brewer or the wholesaler and beer importer.

(2) the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

(3) that the brewer or beer importer recognizes that the wholesaler is free to manage his business in the manner the wholesaler deems best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands he wishes to handle, to determine the effort and resources the wholesaler will exert to develop and promote the sale of the brewer's or beer importer's products handled by the wholesaler;

(4) a procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer or beer importer of said deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct said deficiencies, and that a reasonable period of time shall be given the wholesaler for rectification of said deficiencies prior to any notice of intent to terminate;

(5) a termination clause providing that the brewer or beer importer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise.

History: En. 4-317.3 by Sec. 2, Ch. 322, L. 1974; Sec. 4-317.3, R.C.M. 1947; redes. 4-3-208 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-208; amd. Sec. 9, Ch. 19, L. 1985.

16-3-223. Transfer of wholesaler's interest in business. A wholesaler shall have the right to sell or transfer his business or an interest in his business to any person or to one or more members of his family or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation. Provided, however, the consent of the brewer or beer importer in writing is required for such transferee to continue as a wholesaler of said brewer or beer importer, which consent shall consider the personal, financial, and managerial responsibilities and capabilities of such transferee and which consent shall not unreasonably be withheld.

History: En. 4-317.4 by Sec. 3, Ch. 322, L. 1974; Sec. 4-317.4, R.C.M. 1947; redes. 4-3-209 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-209; amd. Sec. 10, Ch. 19, L. 1985.

16-3-224. Contractual or franchise relationship — existence by actions. The doing or accomplishing of any of the following acts constitutes prima facie evidence of a contractual or franchise relationship between a licensed wholesaler and a brewer or beer importer within the contemplation of 16-3-221 through 16-3-226:

(1) the shipment, preparation for shipment, or acceptance of any order by any brewer or beer importer or its agent for any beer to a licensed wholesaler within this state;

(2) the payment by any licensed wholesaler within this state or the acceptance of payment by any brewer or beer importer or its agent for the shipment of an order of beer intended for sale within this state.

History: En. 4-317.5 by Sec. 4, Ch. 322, L. 1974; Sec. 4-317.5, R.C.M. 1947; redes. 4-3-210 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-210; amd. Sec. 11, Ch. 19, L. 1985.

16-3-225. Injunction to prevent franchise cancellation. Any court of competent jurisdiction may enjoin the cancellation or termination of a franchise or agreement between a wholesaler and a brewer or between a wholesaler and a beer importer at the instance of a wholesaler who is or would be adversely affected by the cancellation or termination. In granting an injunction, the court shall provide that the brewer or beer importer shall not supply the customers or territory of the wholesaler who is servicing the territory or customers through other distributors or means while the injunction is in effect.

History: En. 4-317.6 by Sec. 5, Ch. 322, L. 1974; Sec. 4-317.6, R.C.M. 1947; redes. 4-3-211 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-211; amd. Sec. 12, Ch. 19, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

Regulation of carriers of property, Title 69, ch. 11, part 4.

16-3-226. Brewer-wholesaler or beer importer-wholesaler agreements filed with department. An exact copy of all agreements, contracts, or franchises between a brewer or beer importer and a wholesaler shall be filed with the department as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements, or franchises not upon record with the department shall not be considered by any court as having any force or effect.

History: En. 4-317.7 by Sec. 6, Ch. 322, L. 1974; Sec. 4-317.7, R.C.M. 1947; amd. and redes. 4-3-212 by Sec. 55, Ch. 387, L. 1975; R.C.M. 1947, 4-3-212; amd. Sec. 13, Ch. 19, L. 1985.

16-3-227 through 16-3-229 reserved.

16-3-230. Out-of-state beer required to be shipped to wholesaler. All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped, either directly or via a licensed storage depot, to a licensed wholesaler and by him unloaded into his warehouse in Montana or subwarehouse in Montana. A brewer or beer importer may sell only to wholesalers from a storage depot in Montana and shall maintain records of all beer, including the name or kind received, on hand, and sold, which records may at all times be inspected by any representative of the department. Said wholesaler shall distribute said beer from such warehouse or subwarehouse and shall keep records at his principal place of business of all beer, including the name or kind received, on hand, sold, and distributed. Said records may at all times be inspected by any member or representative of the department.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; R.C.M. 1947, 4-4-103(part); amd. Sec. 2, Ch. 178, L. 1983; amd. Sec. 14, Ch. 19, L. 1985.

16-3-231. Monthly report of wholesaler. Every wholesaler licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form as shall be prescribed by the department, make an exact return to the department of the amount of beer manufactured in this state sold and delivered by him and also of the amount of beer manufactured in places outside of the state sold and delivered by him during the previous month and of his inventory. The department shall have the right at any time to make an examination of the wholesaler's books and of his premises and otherwise check the accuracy of such return or to check the alcoholic content of beer which he may have on hand.

History: En. Sec. 15, Ch. 106, L. 1933; re-en. Sec. 2815.24, R.C.M. 1935; Sec. 4-319, R.C.M. 1947; amd. and redes. 4-3-213 by Sec. 57, Ch. 387, L. 1975; R.C.M. 1947, 4-3-213.

Cross-References

Penalty for inadequate return or failure to file, 16-1-409.

16-3-232. Beer sales by wholesaler. It shall be lawful for any wholesaler to sell and deliver beer purchased or acquired by him to a wholesaler, retailer, or to a common carrier, holding and having a license under this code.

History: En. Sec. 17, Ch. 106, L. 1933; amd. Sec. 6, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.26, R.C.M. 1935; Sec. 4-321, R.C.M. 1947; amd. and redes. 4-3-214 by Sec. 59, Ch. 387, L. 1975; R.C.M. 1947, 4-3-214.

16-3-233. Sales to public by wholesaler unlawful. It shall be unlawful for any wholesaler to give, sell, deliver, or distribute any beer purchased or acquired by him to the public.

History: En. Sec. 18, Ch. 106, L. 1933; amd. Sec. 7, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.27, R.C.M. 1935; amd. Sec. 1, Ch. 274, L. 1973; Sec. 4-322, R.C.M. 1947; redes. 4-3-215 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-215.

16-3-234. Consumption of beer on wholesalers' premises unlawful. It shall be unlawful for any wholesaler to sell, serve, or give away any beer to be consumed on such wholesaler's premises.

History: En. Sec. 19, Ch. 106, L. 1933; re-en. Sec. 2815.28, R.C.M 1935; Sec. 4-323, R.C.M. 1947; redes. 4-3-216 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-216.

16-3-235. Carriers' reports of beer transported. Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, if requested by the department, on or before the 15th day of each month, make an exact return to the department of the amount of such beer so transported and delivered by such railroad or motor carrier during the previous month and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered. A carrier shall retain for 30 months all pertinent and relevant records necessary for the preparation of this report and any other information the department may require.

History: En. Sec. 4, Ch. 220, L. 1939; Sec. 4-326, R.C.M. 1947; amd. and redes. 4-3-218 by Sec. 61, Ch. 387, L. 1975; R.C.M. 1947, 4-3-218; amd. Sec. 1, Ch. 207, L. 1991.

16-3-236 through 16-3-240 reserved.

16-3-241. Furnishing of fixtures or advertising matter to retailers by brewers, beer importers, and wholesalers unlawful — exceptions. (1) It shall be unlawful for any brewer, beer importer, or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer, or furnish, give, or pay for any repairs, improvements, painting, or decorating on or within such premises; provided, however, that it shall be lawful for a brewer, beer importer, or wholesaler to furnish, give, or loan to a retail licensee:

(a) bottle openers, can openers, and trays, with or without advertising matter thereon;

(b) advertising matter or novelties, of a value of not to exceed $50 per brewery or beer importer in any calendar year to any one retailer, for display use on the interior of said retailer's place of business;

(c) not more than two illuminated or electrical signs, each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display; and

(d) maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

(2) A wholesaler may furnish portable equipment used for the temporary cooling, handling, and dispensing of draft beer to a special permittee or a retailer for use in catering an event off his regular premises.

History: En. Sec. 18, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.51, R.C.M. 1935; amd. Sec. 10, Ch. 166, L. 1951; amd. Sec. 1, Ch. 51, L. 1955; amd. Sec. 1, Ch. 110, L. 1959; amd. Sec. 1, Ch. 49, L. 1967; Sec. 4-349, R.C.M. 1947; amd. and redes. 4-3-219 by Sec. 74, Ch. 387, L. 1975; R.C.M. 1947, 4-3-219; amd. Sec. 1, Ch. 568, L. 1981; amd. Sec. 15, Ch. 19, L. 1985; amd. Sec. 1, Ch. 229, L. 1985.

Cross-References

Beer advertising limits, 16-3-244.

16-3-242. Financial interest in retailers prohibited. No brewer, beer importer, or wholesaler shall advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax which may be required to be paid for any retailer, and no brewer, beer importer, or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A brewer, beer importer, or wholesaler shall be deemed to have such a financial interest within the meaning of this section if:

(1) such brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage against the retailer or his premises;

(2) such brewer, beer importer, or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other;

(3) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler.

History: En. 4-3-220 by Sec. 75, Ch. 387, L. 1975; R.C.M. 1947, 4-3-220; amd. Sec. 16, Ch. 19, L. 1985.

16-3-243. Seven-day credit limitation. No sale or delivery of beer shall be made to any retail licensee except for cash paid within 7 days after the delivery thereof, and in no event shall any brewer, beer importer, or wholesaler extend more than 7 days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within 7 days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of brewers, beer importers, wholesalers, and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion.

History: En. 4-3-221 by Sec. 76, Ch. 387, L. 1975; R.C.M. 1947, 4-3-221; amd. Sec. 17, Ch. 19, L. 1985.

16-3-244. Beer advertising limitations. It shall be lawful to advertise beer containing not more than 7% of alcohol by weight, as defined and regulated, subject to the restrictions on brewers and beer importers contained in 16-3-241 of this code and subject to the following restrictions on retailers. No retail licensee shall display or permit to be displayed on the exterior portion or surface of such retailer's place of business or on the exterior portion or surface of any building of which said place of business is a part or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the manufacturer, brewer, beer importer, wholesaler, or place of manufacture of any beer whatsoever, unless it is on a marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days per display period.

History: En. Sec. 11, Ch. 166, L. 1951; Sec. 4-358, R.C.M. 1947; amd. and redes. 4-3-222 by Sec. 77, Ch. 387, L. 1975; R.C.M. 1947, 4-3-222; amd. Sec. 18, Ch. 19, L. 1985; amd. Sec. 1, Ch. 223, L. 1985.

Part 3
Retail Sales Restrictions

16-3-301. Unlawful purchases, transfers, sales, or deliveries — presumption of legal age. (1) It is unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

(2) It is unlawful for a licensed retailer to transport beer from one licensed premises or other facility to any other licensed premises owned by the licensee.

(3) It is unlawful for any licensee, his or her employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 21 years of age;

(b) any intoxicated person or any person actually, apparently, or obviously intoxicated.

(4) Any person under 21 years of age or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from such licensee is equally guilty with said licensee and, upon conviction thereof, is subject to the penalty provided in 45-5-624. However, nothing herein contained may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(5) It is further mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard as issued by the department stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

(6) For purposes of this title and 45-5-623, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages.

History: (1), (2)En. Sec. 31, Ch. 106, L. 1933; amd. Sec. 11, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.33, R.C.M. 1935; amd. Sec. 7, Ch. 166, L. 1951; amd. Sec. 2, Ch. 240, L. 1971; amd. Sec. 3, Ch. 94, L. 1973; Sec. 4-330, R.C.M. 1947; amd. and redes. 4-3-301 by Sec. 64, Ch. 387, L. 1975; Sec. 4-3-301, R.C.M. 1947; (3)En. Sec. 11, Ch. 84, L. 1937; amd. Sec. 3, Ch. 221, L. 1939; amd. Sec. 1, Ch. 71, L. 1953; amd. Sec. 4, Ch. 240, L. 1971; amd. Sec. 5, Ch. 94, L. 1973; Sec. 4-413, R.C.M. 1947; amd. and redes. 4-3-306 by Sec. 91, Ch. 387, L. 1975; Sec. 4-3-306, R.C.M. 1947; (4)En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; Sec. 4-6-404, R.C.M. 1947; R.C.M. 1947, 4-3-301, 4-3-306, 4-6-404(part); amd. Sec. 1, Ch. 186, L. 1979; amd. Sec. 2, Ch. 61, L. 1987; amd. Sec. 1, Ch. 217, L. 1987; (6)En. Sec. 2, Ch. 233, L. 1993.

Compiler's Comments

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Age restriction, Art. II, sec. 14, Mont. Const.

Giving or receiving liquor as bribe to influence voting, 13-35-214, 13-35-215.

Providing alcoholic beverage to intoxicated person, 16-6-304.

Providing alcoholic beverage to person under 21 years of age, 16-6-305.

Penalties, 16-6-314.

Liability for willful acts and negligence, 27-1-701.

Liability for injuries involving alcohol consumption, 27-1-710.

Bartenders and waitresses to be at least 18 years of age, 39-2-306.

Criminal offense — selling or giving alcoholic beverages to minors, 45-5-623.

16-3-302. Sale by retailer for consumption on premises. (1) It is lawful for a licensed retailer to sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of the retailer.

(2) It is lawful for a licensee who has an all-beverages license that he uses at a golf course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under 16-4-109 to sell beer and wine:

(a) in the building or other structural premises constituting the clubhouse or primary indoor recreational quarters of the golf course; and

(b) at any place within the boundaries of the golf course, from a portable satellite vehicle or other movable satellite device that is moved from place to place, whether inside or outside of a building or other structure.

(3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place within the boundaries of the golf course, whether inside or outside of a building or other structure.

History: En. Sec. 29, Ch. 106, L. 1933; re-en. Sec. 2815.31, R.C.M. 1935; Sec. 4-328, R.C.M. 1947; amd. and redes. 4-3-302 by Sec. 63, Ch. 387, L. 1975; R.C.M. 1947, 4-3-302; amd. Sec. 1, Ch. 646, L. 1987.

16-3-303. Sale of beer by retailer for consumption off premises. It shall be lawful for such retailer to sell or furnish beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off the premises of such retailer.

History: En. Sec. 30, Ch. 106, L. 1933; amd. Sec. 10, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.32, R.C.M. 1935; amd. Sec. 1, Ch. 177, L. 1961; Sec. 4-329, R.C.M. 1947; redes. 4-3-303 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-303.

16-3-304. Closing hours for licensed retail establishments. Except as provided in 16-3-305, all licensed establishments wherein alcoholic beverages are sold, offered for sale, or given away at retail shall be closed each day between 2 a.m. and 8 a.m.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of alcoholic beverages, then the sale of alcoholic beverages is prohibited within the limits of any such city or town during the time such sale is prohibited by this code and in addition thereto during the hours that it is prohibited by such ordinance. During such hours all persons except the alcoholic beverage licensee and employees of such licensed establishment shall be excluded from the licensed premises.

History: En. Sec. 1, Ch. 161, L. 1943; amd. Sec. 1, Ch. 162, L. 1959; amd. Sec. 1, Ch. 242, L. 1973; Sec. 4-303, R.C.M. 1947; amd. and redes. 4-3-304 by Sec. 46, Ch. 387, L. 1975; R.C.M. 1947, 4-3-304; amd. Sec. 1, Ch. 347, L. 1985.

16-3-305. Sale of alcoholic beverages during closed hours unlawful — lawful business need not be closed. During the hours when the licensed establishments where alcoholic beverages are sold at retail are required by this code to be closed, it shall be unlawful to sell, offer for sale, give away, consume, or allow the consumption of alcoholic beverages. When an establishment licensed to sell alcoholic beverages is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, grocery store, pharmacy, or other lawful business other than that of the sale of alcoholic beverages, then such other lawful business need not be closed.

History: En. Sec. 3, Ch. 161, L. 1943; Sec. 4-304, R.C.M. 1947; amd. and redes. 4-3-305 by Sec. 47, Ch. 387, L. 1975; R.C.M. 1947, 4-3-305; amd. Sec. 2, Ch. 347, L. 1985.

16-3-306. Proximity to churches and schools restricted. (1) Except as provided in subsections (2) through (4), no retail license may be issued pursuant to this code to any business or enterprise whose premises are within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school other than a commercially operated or postsecondary school. This distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority.

(2) However, the department may renew a license for any establishment located in violation of this section if the licensee does not relocate his entrances any closer than the existing entrances and if the establishment:

(a) was located on the site before the place of worship or school opened; or

(b) was located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.

(3) Subsection (1) does not apply to licenses for the sale of beer, table wine, or both in the original package for off-premises consumption.

(4) Subsection (1) does not apply within the applicable jurisdiction of a local government that has supplanted the provisions of subsection (1) as provided in 16-3-309.

History: En. Sec. 13, Ch. 84, L. 1937; Sec. 4-415, R.C.M. 1947; amd. and redes. 4-4-107 by Sec. 92, Ch. 387, L. 1975; R.C.M. 1947, 4-4-107; amd. Sec. 1, Ch. 152, L. 1981; amd. Sec. 1, Ch. 662, L. 1983.

Cross-References

Application of this section to sales under catering endorsement, 16-4-204.

16-3-307. Sale of liquor at less than posted price unlawful. It shall be unlawful for any licensee under the provisions of this code to resell any liquor purchased by such licensee from a state liquor store or the state of Montana for a sum less than the posted price established by the store and paid by the licensee therefor.

History: En. Sec. 19, Ch. 84, L. 1937; Sec. 4-421, R.C.M. 1947; amd. and redes. 4-3-307 by Sec. 98, Ch. 387, L. 1975; R.C.M. 1947, 4-3-307.

16-3-308. Refilling of liquor bottles prohibited. (1) No person, or the agent or employee of such person, who sells or offers liquor for sale may:

(a) place in any liquor bottle any liquor whatsoever other than that contained in such bottle at the time of stamping by the federal government;

(b) possess any liquor bottle in which any liquor has been placed in violation of subsection (1)(a);

(c) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(d) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (1)(c).

(2) This section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

History: **En. 4-3-308 by Sec. 117, Ch. 387, L. 1975; R.C.M. 1947, 4-3-308.**

Cross-References

Consumer Protection Act, Title 30, ch. 14, part 1.

16-3-309. Sales prohibited by ordinance. (1) An incorporated city may enact an ordinance defining certain areas in its incorporated limits where alcoholic beverages may or may not be sold.

(2) A county may enact an ordinance or resolution defining certain areas in the county, not within the incorporated limits of a city, where alcoholic beverages may or may not be sold.

(3) In enacting such an ordinance or resolution, the county or city may provide that the provisions of 16-3-306(1) do not apply within the jurisdictional area of the ordinance or resolution. If a county or city has supplanted the provisions of 16-3-306(1), upon request of the department the governing body of the county or city must certify to the department whether or not the person or individual identified in the request may lawfully sell alcoholic beverages under the terms of the ordinance or resolution. The department is bound by the determination set forth in the certification.

(4) No county or incorporated city may by ordinance restrict the number of licenses that the department may issue.

History: **En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; R.C.M. 1947, 4-4-201(part); amd. Sec. 2, Ch. 662, L. 1983.**

Cross-References

Denial of license for premises within prohibited zone, 16-4-405.

County and municipal planning and zoning, Title 76, ch. 2.

16-3-310. Lapse of license for nonuse. Any retail license issued pursuant to this code (including any retail license to sell beer and table wine for off-premises consumption) not actually used in a going establishment for 90 days shall automatically lapse. Upon determining the fact of nonuse for such period, the department shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this section shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility, or like business, provided such licensee has secured written authority from the department to close and has licensed premises for a specified period of greater than 90 days' duration. Should the department determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision shall not apply.

History: **En. 4-4-203 by Sec. 80, Ch. 387, L. 1975; R.C.M. 1947, 4-4-203; amd. Sec. 20, Ch. 68, L. 1987.**

16-3-311. Suitable premises for licensed retail establishments. (1) A licensed retailer may use a part of a building as premises licensed for on-premises consumption of alcoholic beverages. The premises must be separated from the rest of the building by permanent walls but may have inside access during lawful hours of operation to the rest of the building even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in which the alcoholic beverages are served.

(2) A licensee whose premises did not meet the requirements of this section on September 24, 1992, shall meet the requirements when an alteration to the premises has been completed and the department has approved the alteration. An alteration is any structural change in a premises. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an alteration under this section.

History: En. Sec. 1, Ch. 203, L. 1993.

Part 4

Sale of Table Wine

16-3-401. Short title — public policy — purpose. (1) This part may be cited as the "Wine Distribution Act".

(2) The public policy of the state of Montana is to maintain a system for the importation and sale of table wine by the state through state liquor facilities and provide for, regulate, and control the acquisition, importation, and distribution of table wine by licensed table wine distributors and the state.

(3) This part governs relationships between suppliers and table wine distributors, and because the legislature recognizes the public interest and the interests of suppliers and table wine distributors in the fair, efficient, and competitive distribution of table wine, this part is intended to:

(a) protect the table wine distributor's independence in managing his own business, including the establishment of selling prices; and

(b) encourage table wine distributors to devote their best efforts to the sale and distribution of the table wines they sell and distribute.

History: En. Sec. 1, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 1, Ch. 699, L. 1979; amd. Sec. 21, Ch. 68, L. 1987; amd. Sec. 9, Ch. 314, L. 1991.

16-3-402. Importation of wine — records. (1) With the exception of table wine purchased by the department and shipped to its warehouse, all table wine manufactured outside of Montana and shipped into Montana shall be consigned to and shipped to a licensed table wine distributor, and by him unloaded into his warehouse in Montana or subwarehouse in Montana. The distributor shall distribute said table wine from such warehouse or subwarehouse.

(2) The distributor shall keep records at his principal place of business of all table wine including the name or kind received, on hand, sold and distributed. The records may at all times be inspected by any member or representative of the department of revenue.

(3) Any table wine which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed table wine distributor or the department shall be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor.

History: En. Sec. 4, I.M. 81, app. Nov. 7, 1978; amd. Sec. 3, Ch. 699, L. 1979.

Cross-References

Search, seizure, and forfeiture of liquor, 16-6-102 through 16-6-107.

16-3-403. To whom table wine distributor may sell. (1) A table wine distributor may sell and deliver table wine purchased or acquired by him to:

(a) another table wine distributor, retailer, or common carrier which holds a license issued by the department of revenue;

(b) the department; and

(c) a commission agent of the department.

(2) It shall be unlawful for any table wine distributor to sell, deliver, or give away any table wine to be consumed on such distributor's premises or to give, sell, deliver, or distribute any table wine purchased or acquired by him to the public.

History: En. Sec. 5, I.M. 81, app. Nov. 7, 1978; amd. Sec. 4, Ch. 699, L. 1979; amd. Sec. 3, Ch. 629, L. 1987.

Cross-References

Delivery of wine by table wine distributor at a place other than retailer's licensed premises forbidden, 16-3-219.

16-3-404. Monthly report of table wine distributor. Every licensed table wine distributor shall, on or before the fifteenth day of each month, make an exact return to the department of revenue of the amount of table wine purchased or acquired by him during the previous month, the amount of table wine sold and delivered by him during the previous month, and the amount of inventory on hand in the manner and form as shall be prescribed by the department. The department shall have the right at any time to make an examination of the table wine distributor's books and of his premises and otherwise check the accuracy of such return or check the alcoholic content of table wine which he may have on hand.

History: En. Sec. 6, I.M. 81, app. Nov. 7, 1978.

16-3-405. Carriers' reports of table wine transported. Every railroad, motor carrier, and airline transporting table wine manufactured out of this state from points outside this state and delivering to points within this state shall, if requested by the department, on or before the fifteenth day of each month, make an exact return to the department of revenue of the amount of such table wine so transported and delivered by such railroad, motor carrier, or airline during the previous month, and shall state in such return the name and address of the consignor and consignee, the date of delivery, and the amount delivered. A carrier shall retain for 30 months all pertinent and relevant records necessary for the preparation of this report and any other information the department may require.

History: En. Sec. 7, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 2, Ch. 207, L. 1991.

16-3-406. Financial interest in retailers prohibited. (1) No winery or table wine distributor shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, any license or tax which may be required to be paid by any retailer, and no winery or table wine distributor shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer.

(2) A winery or table wine distributor shall be deemed to have such a financial interest if:

(a) such winery or table wine distributor owns or holds any interest in or a lien or mortgage against the retailer or his premises; or

(b) such winery or table wine distributor is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from or to the other; or

(c) such table wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine; or

(d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine distributor.

History: En. Sec. 8, I.M. No. 81, app. Nov. 7, 1978.

16-3-407 through 16-3-410 reserved.

16-3-411. Domestic winery. A winery located in Montana and registered pursuant to 16-4-107 may:

(1) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

(2) sell wine it produces at wholesale to the department or to wine distributors;

(3) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;

(4) provide, without charge, wine it produces for consumption at the winery;

(5) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces; or

(6) obtain a special event permit under 16-4-301.

History: En. Sec. 1, Ch. 566, L. 1987.

16-3-412 through 16-3-414 reserved.

16-3-415. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agreement of distributorship" means a contract, agreement, commercial relationship, license, or other arrangement for a definite or an indefinite period of time between a supplier and a table wine distributor that provides for the sale of table wine by the supplier to the table wine distributor.

(2) "Good cause" means failure by a table wine distributor to comply with reasonable business requirements imposed, or sought to be imposed, by a supplier under the terms of an agreement of distributorship if the requirements are imposed on other similarly situated distributors either by the terms of their agreements or in the manner of their enforcement by the supplier.

(3) "Person" means a natural person, corporation, partnership, trust, agency, or other entity and includes individual officers, directors, or other persons in active control of the activities of the entity.

(4) "Supplier" means a winery or an importer of table wines that enters into or is a party to an agreement of distributorship with a table wine distributor.

History: En. Sec. 1, Ch. 314, L. 1991.

16-3-416. Table wine distributor provisions. (1) A supplier or table wine distributor may not fail or refuse to reduce to writing an agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor.

(2) An agreement of distributorship must provide that:

(a) a supplier shall notify a table wine distributor in writing at least 60 days prior to termination of an agreement of distributorship unless a termination without notice is permitted as provided in 16-3-417. The written notice must state the reasons for termination. Notice of termination is void if within 60 days of the notice the table wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection.

(b) a supplier may not unreasonably withhold or delay approval of a sale or transfer of the ownership, management, or control of a table wine distributorship; however, a table wine distributor shall give a supplier no less than 60 days' prior written notice of any material change in ownership, management, or control.

(3) Within 60 days after entering into an agreement of distributorship, the supplier shall advise the department of the agreement by filing a copy of the agreement that must include the sales area or areas designated for the table wine distributor.

(4) If a supplier terminates an agreement of distributorship under the provisions of subsection (2)(a), the table wine distributor subject to the termination is entitled to compensation for the laid-in cost of his inventory. In the event of any termination of the agreement by the supplier other than termination for good cause or for any reason set forth in 16-3-417(3), the distributor is entitled to compensation for the laid-in cost of his inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed under subsection (5) of this section.

(5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the department finds, after hearing the supplier and the table wine distributor, that the termination is in the best interest of the table wine brand concerned. Arbitration under this section must be conducted under the provisions of Title 27, chapter 5.

History: En. Sec. 3, Ch. 314, L. 1991.

16-3-417. Supplier provisions. (1) An agreement of distributorship must provide that a table wine distributor shall:

(a) maintain the financial and competitive capability to efficiently and effectively distribute a supplier's products;

(b) maintain the quality and integrity of a supplier's products in a manner set forth by the supplier;

(c) exert the table wine distributor's best efforts to sell the supplier's wines;

(d) merchandise the products in retail stores as agreed between the table wine distributor and the supplier; and

(e) give a supplier not less than 60 days' written notice of the table wine distributor's intent to terminate an agreement of distributorship.

(2) As provided in 16-3-416, a supplier may terminate an agreement of distributorship based on a deficiency or other good cause by giving 60 days' prior written notice to the table wine distributor.

(3) A supplier may terminate an agreement of distributorship immediately and without notice if the reason for the termination is insolvency, assignment for the benefit of creditors, bankruptcy, or revocation or suspension for more than 14 days of a license to operate that is required by the state or the federal government.

History: En. Sec. 4, Ch. 314, L. 1991.

16-3-418. Dual appointments — equal support — alternate supplier. (1) A supplier may appoint one or more table wine distributors to distribute its table wines in a specified territory. If the supplier appoints two or more table wine distributors to sell its table wines in the same or overlapping territories, the supplier shall offer the same prices, delivery, terms, and promotional support to each table wine distributor.

(2) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of his license or a photocopy of his license, personally obtain from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell.

History: En. Sec. 5, Ch. 314, L. 1991.

16-3-419. Suppliers' prohibitions. A supplier may not:

(1) coerce, induce, or attempt to coerce or induce a table wine distributor to engage in an illegal act or course of conduct;

(2) require a table wine distributor to accept delivery of a product or other item or commodity that was not ordered by the wine distributor.

History: En. Sec. 2, Ch. 314, L. 1991.

16-3-420. Applicability. Within 60 days after October 1, 1991, or within 60 days after the execution of a new agreement by the parties, whichever is later, an agreement of distributorship must be reduced to writing and an exact copy of the agreement must be filed with the department as a public document and must be available to any of the parties to a dispute. Upon filing with the department, the agreement becomes subject to the provisions of 16-1-106, 16-3-401, and 16-3-415 through 16-3-421.

History: En. Sec. 6, Ch. 314, L. 1991.

16-3-421. Injunction. A person injured by a violation of this part may bring a civil action in a court of competent jurisdiction to enjoin further violations in addition to other remedies provided by law.

History: En. Sec. 7, Ch. 314, L. 1991.

CHAPTER 4

LICENSE ADMINISTRATION

Part 1 — Beer and Wine Licenses

16-4-101. Applications for sale, import, or manufacture of beer — qualifications of applicant.
16-4-102. Right of brewers to maintain and operate storage depots — annual licenses.
16-4-103. Wholesalers' licenses — application for and issuance — subwarehouses — imported beer handled through warehouse or subwarehouse.
16-4-104. Beer retailer's license — application and issuance — check of alcoholic content by department.
16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption.
16-4-106. Beer and table wine license transfers.
16-4-107. Winery and importer registration.
16-4-108. Table wine distributor's license.
16-4-109. Publicly owned golf course beer and wine license.
16-4-110. Beer license for tribal alcoholic beverages licensee or enlisted men's, noncommissioned officers', or officers' club.
16-4-111. Catering endorsement for beer and wine licensees.

Part 2 — All-Beverages Licenses

16-4-201. All-beverages license quota.
16-4-202. Resort licenses.
16-4-203. Determination of public convenience and necessity.
16-4-204. Transfer — catering endorsement.
16-4-205. Limit one license to person — business in name of licensee.
16-4-206. Renumbered 16-4-402(1) and (3) by Code Commissioner, 1979.
16-4-207. Notice of application — investigation — publication — protest.
16-4-208. Airport all-beverages license.
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16-4-503. City and county licenses — fees.

Chapter Cross-References
Discrimination in licensing, 49-3-204.

Part 1
Beer and Wine Licenses

16-4-101. Applications for sale, import, or manufacture of beer — qualifications of applicant. (1) Any person desiring to manufacture, import, or sell beer under the provisions of this code shall first apply to the department for a license to do so and pay with such application the license fee prescribed. The department shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person.

(2) Upon being satisfied, from such application or otherwise, that such applicant is qualified, the department shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant.

(3) If the department shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned.

History: En. Sec. 6, Ch. 106, L. 1933; re-en. Sec. 2815.15, R.C.M. 1935; Sec. 4-310, R.C.M. 1947; amd. and redes. 4-4-101 by Sec. 50, Ch. 387, L. 1975; R.C.M. 1947, 4-4-101; amd. Sec. 19, Ch. 19, L. 1985.

16-4-102. Right of brewers to maintain and operate storage depots — annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer, upon the payment to the department of an annual license fee in addition to all other fees and taxes required to be paid by such brewer for each storage depot, to own, lease, maintain, and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this code.

History: En. Sec. 6, Ch. 166, L. 1951; Sec. 4-317.1, R.C.M. 1947; amd. and redes. 4-4-102 by Sec. 54, Ch. 387, L. 1975; R.C.M. 1947, 4-4-102; amd. Sec. 3, Ch. 178, L. 1983.

16-4-103. Wholesalers' licenses — application for and issuance — subwarehouses — imported beer handled through warehouse or subwarehouse. (1) Any person desiring to sell and distribute beer as a wholesaler under the provisions of this code shall apply to the department for a license to do so and tender with his application the license fee provided for, and the department is hereby empowered, authorized, and directed to issue wholesale licenses to qualified applicants in accordance with the provisions of this code. Such license shall be at all times prominently displayed in the place of business of such wholesaler.

(2) An applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house, or warehouse for the receiving of, storage, handling, and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or

licensed retailers. Each wholesaler is entitled to only one wholesale license, which license shall be issued for his principal place of business in Montana. A duplicate license may be issued for one subwarehouse only, in Montana, for each wholesale licensee. The duplicate license shall at all times be prominently displayed at said subwarehouse.

(3) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

(4) As used in subsection (1), "distribute" has the meaning given to it in 16-3-218.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; R.C.M. 1947, 4-4-103(part); amd. Sec. 1, Ch. 359, L. 1981; amd. Sec. 6, Ch. 61, L. 1987.

Compiler's Comments

Effect on Existing Licenses: Section 4, Ch. 359, L. 1981, provided: "The provisions of this act do not affect the validity of any alcoholic beverage license that permits on-premises consumption and that has been issued prior to the effective date of this act [October 1, 1981] or the reissuance of the license."

16-4-104. Beer retailer's license — application and issuance — check of alcoholic content by department. (1) Any person desiring to possess and have beer for sale under the provisions of this code for the purpose of selling it at retail shall first apply to the department for a permit to do so and tender with such application the license fee provided for.

(2) Upon being satisfied, from such application or otherwise, that the applicant is qualified as provided, the department shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant.

(3) If the department shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be returned by the department.

(4) The department shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such retailer and of his premises and otherwise check his methods of conducting business and the alcoholic content of the beer kept by him for sale.

(5) A person may not sell beer at retail without a valid license issued under this code.

History: En. Sec. 28, Ch. 106, L. 1933; amd. Sec. 9, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.30, R.C.M. 1935; Sec. 4-327, R.C.M. 1947; amd. and redes. 4-4-104 by Sec. 62, Ch. 387, L. 1975; R.C.M. 1947, 4-4-104.

16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than one retail beer license, which may not be used in conjunction with a retail all-beverages license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one retail beer license for each 500 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction thereof, and one additional retail beer license for each additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town.

(c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110, which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations;

(d) such limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of such license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; R.C.M. 1947, 4-4-201(1), (3), (4); amd. Sec. 12, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 1, Ch. 25, L. 1981; amd. Sec. 1, Ch. 86, L. 1981; amd. Sec. 2, Ch. 519, L. 1981; amd. Sec. 1, Ch. 50, L. 1983; amd. Sec. 2, Ch. 595, L. 1983; amd. Sec. 3, Ch. 731, L. 1985.

Compiler's Comments

1985 Amendments — Effective Date and Applicability: In (1)(c) after "March 7, 1947", inserted "and retail beer licenses issued under 16-4-110"; and in (1)(d) after "retail beer license to", inserted "an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to".

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-106. Beer and table wine license transfers. A transfer of any brewer's, beer wholesaler's, table wine distributor's, beer retailer's, or table wine retailer's license may be made on application to the department with the consent of the department, provided that the transferee qualifies under this code.

History: En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.44, R.C.M. 1935; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963; Sec. 4-341, R.C.M. 1947; amd. and redes. 4-4-401 by Sec. 68, Ch. 387, L. 1975; amd. Sec. 10, Ch. 496, L. 1977; R.C.M. 1947, 4-4-401(1)(b); amd. Sec. 13, I.M. No. 81, app. Nov. 7, 1978.

16-4-107. Winery and importer registration. Any winery or importer of table wines which holds the appropriate license from the United States of America and which desires to distribute its table wines within this state shall apply to the department of revenue for registration on forms to be prepared and furnished by the department. Each winery will furnish the department with a copy of each container label currently used by the winery on its products imported into Montana. The department shall require such winery or importer to agree to furnish monthly and other reports concerning quantities and prices of table wine it ships into the state, names and addresses of consignees, and such other information as the department may determine to be necessary to assure that importation and distribution of table wines within this state conform to the requirements of this title. No winery or importer of table wines shall ship table wines into this state until such registration is granted by the department; and such registration may be cancelled or suspended by the department upon a finding after notice and hearing that the registrant has not complied with the terms of its registration.

History: En. Sec. 3, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 70, Ch. 575, L. 1981.

16-4-108. Table wine distributor's license. (1) Any person desiring to sell and distribute table wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall tender with his application the annual license fee of $400 and the department may issue licenses to qualified applicants in accordance with the provisions of this code.

(2) All table wine distributors' licenses issued in any year expire on June 30 at midnight of such year.

(3) No license fee may be imposed upon table wine distributors by a municipality or any other political subdivision of the state.

(4) The license shall be at all times prominently displayed in the place of business of such table wine distributor.

(5) An applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, and receiving house or warehouse for the receiving, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor is entitled to only one wholesale table wine license, which license shall be issued for his principal place of business in Montana. A duplicate license may be issued for one subwarehouse only in Montana for each table wine distributor's license. The duplicate license shall at all times be prominently displayed at said subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but shall not hold or have any interest, direct or indirect, in any license to sell beer, table wine, or liquor at retail.

(6) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

(7) As used in subsection (1), "distribute" has the meaning given to it in 16-3-218.

History: En. Sec. 4, I.M. No. 81, app. Nov. 7, 1978; amd. Sec. 3, Ch. 699, L. 1979; amd. Sec. 2, Ch. 359, L. 1981; amd. Sec. 7, Ch. 61, L. 1987; amd. Sec. 23, Ch. 68, L. 1987.

Compiler's Comments

Effect on Existing Licenses: Section 4, Ch. 359, L. 1981, provided: "The provisions of this act do not affect the validity of any alcoholic beverage license that permits on-premises consumption and that has been issued prior to the effective date of this act [October 1, 1981] or the reissuance of the license."

16-4-109. Publicly owned golf course beer and wine license. (1) Upon application, the department of revenue shall issue a retail beer and wine license, to be known as a publicly owned golf course beer and wine license, for use at a golf course owned by the state, a unit of the university system, or a local government.

(2) The application must be made by the state agency, unit of the university system, or local government that owns and operates the public golf course. The owner may lease the license for use at the golf course to an individual or entity approved by the department.

(3) A publicly owned golf course beer and wine license and all retail beer and wine sales thereunder are subject to all statutes and rules governing a retail beer license with a wine license amendment.

(4) The department of revenue shall issue a publicly owned golf course beer and wine license to a qualified applicant regardless of the number of beer and wine licenses already issued within the beer and wine license quota area in which the golf course is situated. A license issued pursuant to this section is nontransferable.

History: En. Sec. 1, Ch. 537, L. 1983; amd. Sec. 1, Ch. 117, L. 1985.

16-4-110. Beer license for tribal alcoholic beverages licensee or enlisted men's, noncommissioned officers', or officers' club. (1) Upon application and qualification, the department shall issue a license to sell beer for consumption on the premises to:

(a) a tribal alcoholic beverages licensee who operates such business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on May 13, 1985.

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-105.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but only to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing licenses to sell beer at retail for on-premises consumption.

History: En. Sec. 1, Ch. 731, L. 1985.

Compiler's Comments

Effective Date — Applicability: Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-111. Catering endorsement for beer and wine licensees. (1) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer and wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of $200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of $35 must accompany the notice.

(5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer and wine on premises where the event is to be held.

(7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

History: En. Sec. 1, Ch. 599, L. 1993.

Compiler's Comments

Effective Date: Section 6, Ch. 599, L. 1993, provided: "[This act] is effective on passage and approval." Approved May 4, 1993.

Part 2

All-Beverages Licenses

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail (an all-beverages license) in accordance with the provisions of this code and the rules of the department may be issued to any person who is approved by the department as a fit and proper person to sell such beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits thereof, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(3) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under 16-4-209, which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(4) Such limitations do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in such county.

History: En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 217, L. 1963; amd. Sec. 1, Ch. 322, L. 1971; amd. Sec. 1, Ch. 340, L. 1974; Sec. 4-403, R.C.M. 1947; amd. and redes. 4-4-202 by Sec. 79, Ch. 387, L. 1975; amd. Sec. 6, Ch. 496, L. 1977; R.C.M. 1947, 4-4-202; amd. Sec. 2, Ch. 25, L. 1981; amd. Sec. 3, Ch. 519, L. 1981; amd. Sec. 3, Ch. 595, L. 1983; amd. Sec. 4, Ch. 731, L. 1985; amd. Sec. 24, Ch. 68, L. 1987.

Compiler's Comments

1985 Amendments — Effective Date and Applicability: In (3) after "March 7, 1947", inserted "and all-beverages licenses issued under 16-4-209"; and in (4) after "retail license to", inserted "an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to".

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-202. Resort licenses. (1) It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail all-beverages licenses may be issued by the department under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this code, the department may issue resort retail all-beverages licenses in a resort area.

(2) For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the department as hereinafter provided.

(3) The department shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules to be first promulgated on or before December 31, 1975.

(4) In addition to the other requirements of this code, a resort area, for the purposes of qualification for the issuance of a resort retail all-beverages license, must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than $500,000, at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in subsection (5) of this section. The word "control" shall mean lands held under lease, option, or permit.

(5) The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries, designating the ownership of the lands within the resort area, which plat must be verified by the resort developer or landowner and filed with the department prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings and other improvements to be built in said area in which resort retail all-beverages licenses are to or may be located. A master plan for the development of the area may be filed by the resort developer in satisfaction of this section.

(6) Upon such filing the department shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules of the department. At least 30 days prior to the date of the hearing, the department shall publish notice thereof, with a description of the location of the proposed resort area, in a newspaper published in the county or counties in which the resort is located, once a week for 4 consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of said publication.

(7) Persons may present statements to the department at the hearing in person or in writing in opposition or support of the plat.

(8) Within 30 days of the hearing, the department shall accept or reject the plat. If rejected the department must state its reasons and set forth the conditions, if any, under which the plat will be accepted, and the decision of

the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

(9) Once filed with the department, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the department, which approval shall be according to public convenience and necessity.

(10) (a) When the department has accepted a plat and a given resort area has been determined, applications may then be filed with the department by persons for the issuance of resort retail all-beverages licenses within the resort area.

(b) Each applicant must submit plans showing the location, appearance, and floor plan of the premises for which application for a license is made.

(c) If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction or are otherwise incomplete at the time of such application, the department shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204 and 16-4-404, no resort retail all-beverages license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

(12) A resort retail all-beverages license shall not be subject to the quota limitations set forth in 16-4-201, and if the requirements of this section have been met, a resort retail all-beverages license shall be issued by the department on the basis that the department has determined that such license is justified by public convenience and necessity, in accordance with the procedure required in 16-4-207.

History: En. 4-4-204 by Sec. 81, Ch. 387, L. 1975; R.C.M. 1947, 4-4-204(part); amd. Sec. 2, Ch. 583, L. 1979; amd. Sec. 25, Ch. 68, L. 1987.

Cross-References

Contested cases and the Montana Administrative Procedure Act, 2-4-102, Title 2, ch. 4, parts 6 and 7.

Resort community tax, 7-6-4461 through 7-6-4467.

16-4-203. Determination of public convenience and necessity. An original license issued pursuant to 16-4-104, 16-4-201, or 16-4-202 or the transfer of location of a license may be approved only if the department has determined, upon a hearing held pursuant to the Montana Administrative Procedure Act, that the issuance or transfer of the license is justified by public convenience and necessity. If there is no opposition to the application for issuance or transfer of the license, a hearing is not required.

History: En. 4-403.1 by Sec. 2, Ch. 340, L. 1974; Sec. 4-403.1, R.C.M. 1947; redes. 4-4-205 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-4-205; amd. Sec. 4, Ch. 156, L. 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

16-4-204. Transfer — catering endorsement. (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(e) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages for on-premise consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (2) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of $35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

History: (4)(a), (b) of 4-4-206 En. Sec. 88, Ch. 387, L. 1975; R.C.M. 1947, 4-4-206(4)(a)(b)(part); amd. Sec. 1, Ch. 139, L. 1979; amd. Sec. 3, Ch. 25, L. 1981; amd. Sec. 1, Ch. 59, L. 1981; amd. Sec. 1, Ch. 512, L. 1981; amd. Sec. 1, Ch. 29, L. 1983; amd. Sec. 1, Ch. 37, L. 1983; amd. Sec. 1, Ch. 59, L. 1983; amd. Sec. 1, Ch. 636, L. 1983; amd. Sec. 5, Ch. 731, L. 1985; amd. Sec. 1, Ch. 34, L. 1987; amd. Sec. 3, Ch. 180, L. 1987; amd. Sec. 2, Ch. 599, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 599 in (2)(a), at end of first sentence, inserted "for on-premise consumption"; deleted former first sentence of (2)(c) that read: "A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $35 must be filed with the department at least 3 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held" and deleted fourth sentence that read: "If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection"; at beginning of (2)(d), after "The licensee shall", substituted "notify" for "file with each application for an event to be catered a written statement of approval of the premises where the event is to be held, issued by", before "event" inserted "catered", and inserted second sentence requiring a $35 fee; and made minor changes in style. Amendment effective May 4, 1993.

1985 Amendments — Effective Date and Applicability: In (1)(a)(ii) and (1)(b) inserted "exclusive of those issued under 16-4-209(1)(a) and (1)(b)"; and inserted (1)(e).

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-205. Limit one license to person — business in name of licensee. No person shall be issued more than one all-beverages license in any year, with the exception of a secured party issued an additional all-beverages license as the result of a default. Such a secured party shall transfer ownership of any additional all-beverages license within 180 days of issuance. No business may be carried on under any license issued under this chapter except in the name of the licensee.

History: En. Sec. 9, Ch. 84, L. 1937; Sec. 4-411, R.C.M. 1947; amd. and redes. 4-4-207 by Sec. 89, Ch. 387, L. 1975; R.C.M. 1947, 4-4-207; amd. Sec. 1, Ch. 82, L. 1985.

Cross-References

Secured transactions and sales of chattel paper, Title 30, ch. 9.

16-4-206. Renumbered 16-4-402(1) and (3) by Code Commissioner, 1979.

16-4-207. Notice of application — investigation — publication — protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer a retail license, the department shall review the application for completeness and to determine whether the applicant or the premises to be licensed meets criteria provided by law. The department shall request that the department of justice investigate the application as provided in 16-4-402. If after the investigation the department does not discover a basis to deny the application, the department shall promptly publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail license and that protests against the issuance of a license to the applicant by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is given that on the .... day of ...., 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of ...... counties may protest against the issuance of the license. Protests may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., 19...

Dated .... Signed ....
ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no written protests, the department may issue or transfer the license without holding a public hearing. If written protests by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties against the issuance or transfer of the license are received, the department shall hold a public hearing.

History: En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; R.C.M. 1947, 4-4-302(part); amd. Sec. 1, Ch. 583, L. 1979; amd. Sec. 1, Ch. 445, L. 1983; amd. Sec. 1, Ch. 231, L. 1989; amd. Sec. 5, Ch. 156, L. 1991; amd. Sec. 5, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 in (1), at end of first sentence, inserted provision for review of the application and for a determination whether licensing criteria are met and at beginning of second sentence substituted provision that the Department of Revenue request a Department of Justice investigation for a provision that the Department of Revenue investigate; and made minor changes in style. Amendment effective July 1, 1993.

16-4-208. Airport all-beverages license. (1) The department of revenue shall issue one all-beverages license, to be known as a public airport all-beverages license, for use at each publicly owned airport served by scheduled airlines and enplaning and deplaning a minimum total of 20,000 passengers annually when:

(a) application is made;

(b) upon finding that this license is justified by public convenience and necessity, including the convenience and necessity of the public traveling by scheduled airlines; and

(c) following a hearing as provided in 16-4-207.

(2) Application shall be made by the agency owning and operating the airport. The agency owning and operating the airport may lease the airport all-beverages license to an individual or entity approved by the department.

(3) A public airport all-beverages license and all retail alcoholic beverage sales thereunder shall be subject to all statutes and rules governing all-beverages licenses.

(4) The department of revenue shall issue a public airport all-beverages license to a qualified applicant regardless of the number of all-beverages licenses already issued within the all-beverages license quota area in which the airport is situated.

History: En. Sec. 1, Ch. 461, L. 1979; amd. Sec. 26, Ch. 68, L. 1987.

16-4-209. All-beverages license for tribal alcoholic beverages licensee or enlisted men's, noncommissioned officers', or officers' club. (1) Upon application and qualification, the department shall issue an all-beverages license to:

(a) a tribal alcoholic beverages licensee who operates such business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on May 13, 1985.

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-201.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but such license may only be transferred to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing all-beverages licenses.

History: En. Sec. 2, Ch. 731, L. 1985.

Compiler's Comments

Effective Date — Applicability: Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-210. Resort license — tour boat endorsement. (1) A holder of a resort all-beverages license issued under 16-4-202 may be issued a tour boat endorsement to allow the sale of alcoholic beverages to passengers on boats at least 40 feet in length and equipped to carry at least 50 passengers.

(2) The endorsement must be issued upon written application to the department and submission of an annual fee of $200. The applicant must also submit proof:

(a) of compliance with the following requirements:

(i) county health department inspection and approval of food services offered on the boat;

(ii) inspection and approval by the department of fish, wildlife, and parks of boat safety equipment requirements;

(iii) current boat registration; and

(iv) business liability insurance coverage; and

(b) that the registered owner of the tour boat is:

(i) a resort all-beverages licensee;

(ii) an individual named on a resort all-beverages license; or

(iii) a stockholder owning 10% or more of any class of stock in a corporate resort all-beverages license.

(3) Alcoholic beverages may be sold pursuant to the endorsement authorized in subsection (1) only while the boat is underway within 30 miles of the resort boundary or is in preparation for scheduled departure. Except as provided in this subsection, no alcoholic beverages may be sold or served when the boat is secured at its or any other mooring.

(4) Sale of alcoholic beverages under the endorsement is subject to all other requirements imposed for any all-beverages license issued under this part.

History: En. Sec. 1, Ch. 149, L. 1989.

Cross-References

Boats — certificate of ownership, 23-2-508, 23-2-510.

Boat safety equipment requirements, 23-2-521.

Part 3
Special Licenses

16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance. (1) (a) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event shall in the discretion of the liquor division be entitled to a special permit to sell beer and table wine to the patrons of such event to be consumed within the enclosure wherein the event is held, except as provided in subsection (1)(d).

(b) The application of any such association or corporation shall be presented 3 days in advance and shall describe the location of such enclosure where such event is to be held, the nature of the event, and the period when it is contemplated that the event will be held. The application shall be accompanied by the amount of the permit fee and a written statement of approval of the premises where the event is to be held issued by the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(c) The permit issued to such association or corporation is a special permit but shall not authorize the sale of beer and table wine except starting 1 day in advance of the regular period when events are being held upon such grounds and during the period described in the application and for 1 day thereafter.

(d) A special permit issued under this subsection (1) for the purpose of selling and serving beer at an event conducted on the premises of a county fairground or public sports arena authorizes the permitholder to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code shall, in the discretion of the department, without notice or hearing as provided in 16-4-207, be entitled to a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at such post or lodge to members and their guests only, to be consumed within the hall or building of such post or lodge.

(b) The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit issued shall be for a 24-hour period only, ending at 2 a.m., and the department may not issue more than 12 such permits to any such post or lodge during a calendar year.

History: En. Sec. 13, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.35, R.C.M. 1935; amd. Sec. 1, Ch. 235, L. 1963; amd. Sec. 1, Ch. 285, L. 1974; Sec. 4-332, R.C.M. 1947; amd. and redes. 4-4-105 by Sec. 65, Ch. 387, L. 1975; amd. Sec. 4, Ch. 496, L. 1977; R.C.M. 1947, 4-4-105; amd. Sec. 1, Ch. 401, L. 1981; amd. Sec. 2, Ch. 37, L. 1983; amd. Sec. 2, Ch. 34, L. 1987; amd. Sec. 2, Ch. 180, L. 1987.

16-4-302. Passenger carrier licenses. Common carriers serving Montana may serve alcoholic beverages to passengers in aircraft over or railroad cars in the state of Montana upon the issuance of a retail all-beverages license by the department for that purpose. Such licenses shall be issued on an annual basis to common carriers making application therefor and shall be effective from July 1 of the current year to July 1 of the following year.

History: En. 4-4-109 by Sec. 114, Ch. 387, L. 1975; R.C.M. 1947, 4-4-109(part); amd. Sec. 27, Ch. 68, L. 1987.

Cross-References

Regulation of carriers of passengers, Title 69, ch. 11, part 2.

16-4-303. Special beer and table wine license for nonprofit arts organizations. (1) A nonprofit arts organization as defined in subsection (4) is entitled to a special beer and table wine license to sell beer and table wine to patrons of exhibitions, productions, performances, or programs sponsored or presented by the organization in a specific theatre or other appropriately designated place for on-premises consumption.

(2) The proceeds derived from sales of beer and table wine, except for reasonable operating costs, must be used to further the purposes of the organization.

(3) The department shall have access to the organization's records to determine whether the organization is entitled to a license under this section.

(4) For the purposes of this section, the term "nonprofit arts organization" means an organization governed under Title 35, chapter 2, that is organized and operated for the principal purpose of providing artistic or cultural exhibitions, presentations, or performances for viewing or attendance by the general public. Assets of the corporation must be irrevocably dedicated to the activities

for which the license is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of a member or individual except a nonprofit organization, association, or corporation. An artistic or cultural exhibition, presentation, or performance includes:

(a) an exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums; and

(b) a musical or dramatic performance or series of performances.

(5) A license issued under this section is not subject to the provisions of 16-4-105.

History: En. Sec. 1, Ch. 380, L. 1987.

16-4-304. Seasonal beer and wine license for Yellowstone airport. (1) Upon application, the department of revenue shall issue a retail beer and wine license to the Yellowstone airport, which is an airport near West Yellowstone, Montana, owned by the state of Montana and operated by the department of transportation.

(2) The application must be made by the department of transportation. The department of transportation may lease the license of use at the airport to an individual or entity approved by the department of revenue.

(3) The license is valid for the retail sale of beer and wine from June 1 to October 1 of each year.

(4) There is no annual fee for the license.

(5) The license issued pursuant to this section:

(a) is not subject to the quota provisions of 16-4-105;

(b) is nontransferable;

(c) does not permit gambling activities otherwise allowed under Title 23, part 5.

History: En. Sec. 1, Ch. 529, L. 1993.

Compiler's Comments

Effective Date: Section 3, Ch. 529, L. 1993, provided that this section is effective May 31, 1993.

Part 4

Licensing Criteria

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

Part Cross-References

Video gaming machine licenses for alcoholic beverage licensees, 23-5-611.

Prohibition against discrimination in issuance of license, 49-3-204.

16-4-401. License as privilege — criteria for decision on application. (1) A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in subsection (6), in the case of a license that permits on-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iii) the applicant is a resident of the state and is qualified to vote in a state election;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a) of this section;

(iii) the corporation is authorized to do business in Montana; and

(iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsection (2)(a)(i); and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).

(3) In the case of a license that permits only off-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a) of this section; and

(iii) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b).

(4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iii) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments;

(iv) the applicant is not under the age of 19 years; and

(v) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(ii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a) of this section;

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(iv) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302.

History: En. Sec. 10, Ch. 84, L. 1937; amd. Sec. 1, Ch. 76, L. 1945; amd. Sec. 1, Ch. 244, L. 1947; amd. Sec. 1, Ch. 10, L. 1957; Sec. 4-412, R.C.M. 1947; amd. and redes. 4-4-108 by

Sec. 90, Ch. 387, L. 1975; R.C.M. 1947, 4-4-108; amd. Sec. 2, Ch. 186, L. 1979; amd. Sec. 3, Ch. 359, L. 1981; amd. Sec. 1, Ch. 178, L. 1983; amd. Sec. 20, Ch. 19, L. 1985; amd. Sec. 1, Ch. 133, L. 1985; amd. Sec. 28, Ch. 68, L. 1987.

Compiler's Comments

Effect on Existing Licenses: Section 4, Ch. 359, L. 1981, provided: "The provisions of this act do not affect the validity of any alcoholic beverage license that permits on-premises consumption and that has been issued prior to the effective date of this act [October 1, 1981] or the reissuance of the license."

Cross-References

Age of majority, Art. II, sec. 14, Mont. Const.

Rights of convicted person, Art. II, sec. 28, Mont. Const.

Rules for determining residence, 1-1-215.

Voter qualifications, 13-1-111.

16-4-402. Application — investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application in writing, signed by the applicant and containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department. The application must be verified by the affidavit of the person making it before a person authorized to administer oaths.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall request that the department of justice make a thorough investigation of all matters relating to the application. Based on the results of the investigation, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2) or a special permit provided in 16-4-301.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) If, within 30 days of receiving the completed application, the department finds no basis for denying the application, the department shall proceed to publish the notice of the application as required by 16-4-207.

History: (1), (3)En. Sec. 5, Ch. 84, L. 1937; amd. Sec. 2, Ch. 221, L. 1939; amd. Sec. 2, Ch. 163, L. 1941; Sec. 4-407, R.C.M. 1947; amd. and redes. 4-4-301 by Sec. 83, Ch. 387, L. 1975; amd. Sec. 7, Ch. 496, L. 1977; Sec. 4-4-301, R.C.M. 1947; Sec. 16-4-206, MCA 1979; (2)En. Sec. 6, Ch. 84, L. 1937; Sec. 4-408, R.C.M. 1947; amd. and redes. 4-4-303 by Sec. 85, Ch. 387, L. 1975; amd. Sec. 9, Ch. 496, L. 1977; Sec. 4-4-303, R.C.M. 1947; redes. 16-4-402(1) and (3) by Code Commissioner, 1979; amd. Sec. 1, Ch. 18, L. 1979; amd. Sec. 3, Ch. 37, L. 1983; amd. Sec. 1, Ch. 51, L. 1983; amd. Sec. 6, Ch. 156, L. 1991; amd. Sec. 6, Ch. 414, L. 1993; amd. Sec. 4, Ch. 599, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 414 in (2)(a), in first sentence, substituted "request that the department of justice" for "within 30 days" and at beginning of second sentence inserted "Based on the results of the investigation"; inserted (4) requiring the Department of Revenue to publish notice of the application if no basis for denying the application is found within 30 days; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 599 near middle of (2)(b) inserted reference to 16-4-111; and made minor changes in style. Amendment effective May 4, 1993.

16-4-403. Fingerprints required of licensees and mortgagees. All applicants for a Montana retail all-beverages or beer license, including corporate officers and managers, may be required by the department or the department of justice to have their fingerprints taken for use in determining the eligibility of the applicant for the license. This provision applies to all who file a security interest against the license except banks, savings and loan institutions, and licensed lending agencies.

History: Ap. p. Sec. 1, Ch. 487, L. 1973; Sec. 4-408.1, R.C.M. 1947; amd. and redes. 4-4-304 by Sec. 86, Ch. 387, L. 1975; Sec. 4-4-304, R.C.M. 1947; Ap. p. Sec. 2, Ch. 487, L. 1973; Sec. 4-408.2, R.C.M. 1947; redes. 4-4-305 by Sec. 120, Ch. 387, L. 1975; Sec. 4-4-305, R.C.M. 1947; R.C.M. 1947, 4-4-304, 4-4-305; amd. Sec. 7, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 in first sentence, after "by the department", inserted "or the department of justice" and deleted "when applying for said license"; and made minor changes in style. Amendment effective July 1, 1993.

16-4-404. Protest period — contents of license — posting — privilege — transfer. (1) A license may not be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code must state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under the license, and other information the department considers necessary. If the licensee is a partnership or if more than one person has an interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises in which the business authorized under the license is conducted, and the license must be exhibited upon request to any authorized representative of the department or the department of justice or to any peace officer of the state of Montana.

(3) A license issued under the provisions of this code is a privilege personal to the licensee named in the license and is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of a deceased licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed business under appropriate probate proceedings.

(5) (a) A licensee may apply to the department for a transfer of the license to different premises if:

(i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

(ii) the lease of the licensed premises has expired;

(iii) in case of rented licensed premises, there has been an eviction or increase of rent by the landlord; or

(iv) the licensee has proposed removal of the license to premises that are as substantially suited for the retail alcoholic beverages business as the premises proposed to be vacated.

(b) The department may, after notice and opportunity for protest, permit a transfer in the cases specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the licensee applying for the transfer and is justified by public convenience and necessity. The department may not allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under a license, the license may be transferred to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by the department. A licensee or transferee or proposed transferee who operates or attempts to operate under a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the license in writing, is considered to be operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.

(7) Except as provided in subsections (2) through (6) and 16-4-204, a license may not be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license. Beer or wine sold to a licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a subsequent licensee has the obligation to pay for the beer or wine.

History: (1)En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; R.C.M. 1947, 4-4-302(part); (2) thru (7) En. Sec. 8, Ch. 84, L. 1937; amd. Sec. 1, Ch. 97, L. 1951; Sec. 4-410, R.C.M. 1947; amd. and redes. 4-4-206 by Sec. 88, Ch. 387, L. 1975; R.C.M. 1947, 4-4-206(part); redes. from 16-4-204(1)-(5), (8) by Code Commissioner, 1983; amd. Sec. 29, Ch. 68, L. 1987; amd. Sec. 7, Ch. 156, L. 1991; amd. Sec. 1, Ch. 311, L. 1993; amd. Sec. 8, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 311 inserted third sentence of (7) regarding a subsequent licensee's obligation to pay for beer or wine sold on credit even though a lien on the license is not created; and made minor changes in style.

Chapter 414 in (2), in last sentence after "of the department", inserted "or the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Mortgages generally, Title 71, ch. 1, part 1.

Liens generally, Title 71, ch. 3, part 1.

16-4-405. Denial of license. (1) The department may deny the issuance of a retail alcoholic beverages license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(2) A retail license may not be issued by the department for a premises situated within a zone of a city or town where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which has been filed with the department.

(3) A license under this code may not be issued if the department finds from the evidence at the hearing held pursuant to 16-4-207(3) that:

(a) the welfare of the people residing in the vicinity of the premises for which the license is desired will be adversely and seriously affected;

(b) there is not a public convenience and necessity justification;

(c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria established by this code; or

(d) the purposes of this code will not be carried out by the issuance of the license.

History: **(1), (2)En. Sec. 14, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.36, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974; Sec. 4-333, R.C.M. 1947; amd. and redes. 4-4-201 by Sec. 66, Ch. 387, L. 1975; amd. Sec. 5, Ch. 496, L. 1977; Sec. 4-4-201, R.C.M. 1947; (3)En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965; Sec. 4-407.1, R.C.M. 1947; amd. and redes. 4-4-302 by Sec. 84, Ch. 387, L. 1975; amd. Sec. 8, Ch. 496, L. 1977; Sec. 4-4-302, R.C.M. 1947; R.C.M. 1947, 4-4-201(part), 4-4-302(part); amd. Sec. 30, Ch. 68, L. 1987; amd. Sec. 8, Ch. 156, L. 1991.**

Cross-References

Sales prohibited by ordinance, 16-3-309.

Nuisances and their abatement, Title 27, ch. 30.

Disorderly conduct, 45-8-101.

Maintaining a public nuisance, 45-8-111.

16-4-406. Renewal — suspension or revocation — penalty. (1) The department may upon its own motion and shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, wholesaler, or retailer licensed under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee;

(b) proceed to revoke the license of the licensee;

(c) suspend the license for a period of not more than 3 months;

(d) refuse to grant a renewal of the license after its expiration; or

(e) impose a civil penalty not to exceed $1,500.

(3) If the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act.

History: **En. Sec. 46, Ch. 106, L. 1933; re-en. Sec. 2815.45, R.C.M. 1935; amd. Sec. 8, Ch. 166, L. 1951; Sec. 4-342, R.C.M. 1947; amd. and redes. 4-4-402 by Sec. 69, Ch. 387, L. 1975; R.C.M. 1947, 4-4-402; amd. Sec. 9, Ch. 156, L. 1991; amd. Sec. 9, Ch. 414, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 414 in (1), after "person", inserted "request that the department of justice"; and near beginning of (2) and (3), after "after", inserted "receiving the results of the department of justice's". Amendment effective July 1, 1993.

Cross-References

Hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

16-4-407. Suspension or revocation of licenses. Each July 1, the department shall issue licenses to brewers, beer importers, wholesalers, or retailers or for the retail sale of alcoholic beverages on an annual basis and at such fees as are prescribed by law, and such licenses are subject to suspension or revocation under 16-4-406 after midnight of June 30 of the succeeding year if the annual renewal fees required by 16-4-501 are not paid. The department shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency.

History: En. Sec. 2, Ch. 235, L. 1943; Sec. 4-406, R.C.M. 1947; amd. and redes. 4-4-404 by Sec. 82, Ch. 387, L. 1975; amd. Sec. 12, Ch. 496, L. 1977; R.C.M. 1947, 4-4-404; amd. Sec. 2, Ch. 29, L. 1983; amd. Sec. 21, Ch. 19, L. 1985.

16-4-408. Renewal of suspended licenses. After suspension or revocation of a license, the department shall have the power to renew the same if in its discretion a proper showing therefor has been made.

History: En. Sec. 27, Ch. 84, L. 1937; Sec. 4-429, R.C.M. 1947; amd. and redes. 4-4-405 by Sec. 102, Ch. 387, L. 1975; R.C.M. 1947, 4-4-405.

16-4-409. Repealed. Sec. 5, Ch. 595, L. 1983.

History: En. Sec. 5, Ch. 519, L. 1981.

16-4-410. Repealed. Sec. 5, Ch. 595, L. 1983.

History: En. Sec. 6, Ch. 519, L. 1981.

16-4-411. Appeals concerning alcoholic beverages laws. (1) Any interested party shall have the right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension, or revocation of alcoholic beverages licenses to the district court in the county in which the issuance, transfer, suspension, or revocation occurred or, at the appellant's option, in the district court of the first judicial district.

(2) The appeal must be in conformity with the provisions of Title 2, chapter 4, part 7.

History: En. 82A-1808 by Sec. 2, Ch. 207, L. 1973; en. 82A-1808 by Sec. 64.1, Ch. 391, L. 1973; R.C.M. 1947, 82A-1808; amd. Sec. 1, Ch. 135, L. 1985; amd. Sec. 31, Ch. 68, L. 1987.

Cross-References

Contested cases and the Montana Administrative Procedure Act, Title 2, ch. 4, parts 6 and 7.

16-4-412. Limits on concurrent applications. (1) An application for the issuance of a new license or for the transfer of an existing license may not be considered by the department if a previous application for the same premises is pending. An application is considered pending if a final decision:

(a) has not been made by the department; or

(b) has been made by the department but:

(i) a petition for judicial review can still be filed or has been filed; or

(ii) an appeal to the Montana supreme court can still be filed or has been filed.

(2) This section does not prevent the department from considering more than one application for the same location pursuant to competition for a last available license.

History: En. Sec. 1, Ch. 156, L. 1991.

16-4-413. Denial of application — five-year moratorium. (1) If an application for the issuance of a new license or for the transfer of an existing license has been denied for any reason provided in 16-4-405, the department may not consider an application or issue any retail license, special permit, or special license for those premises for 5 years unless the department, using the criteria described in subsection (3), determines that the proposed use is substantially different from the use that was rejected. The prohibition period commences on the date of the final agency decision or, if judicially reviewed, on the date the judicial decision is final.

(2) If an application is withdrawn after a hearing has been held in which testimony is received regarding any reason for denial provided in 16-4-405, the effect of the withdrawal is the same as if a final decision had been made denying the application for any reason provided in 16-4-405. The 5-year prohibition against considering an application or issuing a license for that vicinity commences on the date of the withdrawal.

(3) The department shall determine whether a proposed use is substantially different by considering:

(a) the capacity of the proposed use;

(b) the nature of the establishment;

(c) the presence and character of any entertainment; and

(d) the characteristics of the neighborhood.

History: En. Sec. 2, Ch. 156, L. 1991.

Part 5

Licensing Fees

16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400; each subwarehouse, $400;

(c) each beer retailer, $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer and table wine are sold at those events lasting 2 or more days but in no case shall the fee be less than $30.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual fee for resort retail all-beverages licenses within a given resort area shall be $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as provided in this section, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as provided in this section, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for a license issued. The one-time license fee of $20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-beverage license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(10) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year.

(12) All license and permit fees collected under this section must be deposited as provided in 16-2-108.

History: (1) thru (5), (9)En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; re-en, Sec. 2815.44, R.C.M. 1935; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963; Sec. 4-341, R.C.M. 1947; amd. and redes. 4-4-401 by Sec. 68, Ch. 387, L. 1975; amd. Sec. 10, Ch. 496, L. 1977; Sec. 4-4-401, R.C.M. 1947; (6)En. 4-4-204 by Sec. 81, Ch. 387, L. 1975; Sec. 4-4-204, R.C.M. 1947; (7)En. Sec. 4, Ch. 84, L. 1937; amd. Sec. 1, Ch. 221, L. 1939; amd. Sec. 1, Ch. 163, L. 1941; amd. Sec. 1, Ch. 211, L. 1943; amd. Sec. 1, Ch. 236, L. 1947; amd. Sec. 1, Ch. 356, L. 1974; Sec. 4-404, R.C.M. 1947; R.C.M. 1947, 4-404(part), 4-4-204(part), 4-4-401(part); amd. Sec. 13, I.M. No. 81, app. Nov. 7, 1978; (8)En. Sec. 2, Ch. 461, L. 1979; amd. Sec. 1, Ch. 181, L. 1981; amd. Sec. 2, Ch. 401, L. 1981; amd. Sec. 4, Ch. 519, L. 1981; amd. Sec. 3, Ch. 29, L. 1983; amd. Sec. 2, Ch. 51, L. 1983; amd. Sec. 4, Ch. 595, L. 1983; amd. Sec. 22, Ch. 19, L. 1985; amd. Sec. 2, Ch. 141, L. 1985; amd. Sec. 32, Ch. 68, L. 1987; amd. Sec. 2, Ch. 380, L. 1987; amd. Sec. 21, Ch. 83, L. 1989; amd. Sec. 2, Ch. 225, L. 1989.

16-4-502. Census. The census taken under the direction of congress shall be the basis upon which the respective populations of the counties and incorporated cities or towns shall be determined. However, in the interim between censuses, the department shall use as such basis the most recent population estimates published by the bureau of the census, United States department of commerce.

History: En. Sec. 4, Ch. 84, L. 1937; amd. Sec. 1, Ch. 221, L. 1939; amd. Sec. 1, Ch. 163, L. 1941; amd. Sec. 1, Ch. 211, L. 1943; amd. Sec. 1, Ch. 236, L. 1947; amd. Sec. 1, Ch. 356, L. 1974; Sec. 4-404, R.C.M. 1947; amd. and redes. 4-4-403 by Sec. 119, Ch. 387, L. 1975; amd. Sec. 11, Ch. 496, L. 1977; R.C.M. 1947, 4-4-403; amd. Sec. 4, Ch. 25, L. 1981.

16-4-503. City and county licenses — fees. The city council of any incorporated town or city or the county commissioners outside of any incorporated town or city may provide for the issuance of licenses to persons to whom a retail license has been issued under the provisions of this code and may fix license fees, not to exceed a sum equal to five-eighths of the fee for an all-beverages license or 100% of the fee for a beer or beer-and-wine license collected by the department from such licensee under this code.

History: En. Sec. 28, Ch. 84, L. 1937; Sec. 4-430, R.C.M. 1947; amd. and redes. 4-4-406 by Sec. 103, Ch. 387, L. 1975; amd. Sec. 1, Ch. 509, L. 1977; R.C.M. 1947, 4-4-406.

Cross-References

Functions, powers, and duties of Department, 16-1-302.

Department rules governing conduct, management, and equipment of licensed premises, 16-1-303.

CHAPTER 5

IDENTIFICATION CARDS

(Repealed. Sec. 2, Ch. 26, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections:

16-5-101. En. Sec. 1, Ch. 190, L. 1957; amd. Sec. 8, Ch. 240, L. 1971; amd. Sec. 9, Ch. 94, L. 1973; Sec. 4-506, R.C.M. 1947; redes. 4-5-101 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-5-101.

16-5-102. En. Sec. 2, Ch. 190, L. 1957; Sec. 4-507, R.C.M. 1947; amd. and redes. 4-5-102 by Sec. 106, Ch. 387, L. 1975; R.C.M. 1947, 4-5-102.

16-5-103. En. Sec. 3, Ch. 190, L. 1957; Sec. 4-508, R.C.M. 1947; amd. and redes. 4-5-103 by Sec. 107, Ch. 387, L. 1975; R.C.M. 1947, 4-5-103.

16-5-104. En. Sec. 4, Ch. 190, L. 1957; Sec. 4-509, R.C.M. 1947; amd. and redes. 4-5-104 by Sec. 108, Ch. 387, L. 1975; R.C.M. 1947, 4-5-104.

16-5-105. En. Sec. 5, Ch. 190, L. 1957; amd. Sec. 1, Ch. 272, L. 1973; Sec. 4-510, R.C.M. 1947; amd. and redes. 4-5-105 by Sec. 109, Ch. 387, L. 1975; amd. Sec. 13, Ch. 496, L. 1977; R.C.M. 1947, 4-5-105.

16-5-106. En. Sec. 7, Ch. 190, L. 1957; Sec. 4-512, R.C.M. 1947; redes. 4-5-106 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-5-106.

CHAPTER 6

ENFORCEMENT

Part 1 — Investigations

16-6-101. Employment of investigators and prosecuting officers.
16-6-102. Search warrants.
16-6-103. Examination of retailer's premises and carriers' cars and aircraft.
16-6-104. Unlawful alcoholic beverage — seizure — forfeiture.
16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance.
16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing.
16-6-107. Disposal of forfeited alcoholic beverages — report.
16-6-108. Inspection of carriers' records.
16-6-109. Unlawful for carrier to refuse inspection of records.

Part 2 — Prosecutions

16-6-201. Jurisdiction of courts.
16-6-202. Appeal.
16-6-203. Description of offense.
16-6-204. Defense need not be negatived.
16-6-205. Sufficiency of evidence.
16-6-206. Proof of violation.
16-6-207. Analyst's report as prima facie evidence of contents.
16-6-208. Inference of intoxicating beverage.
16-6-209. Inferences of fact from evidence found.

Part 3 — Miscellaneous Prohibitions and Penalties

16-6-301. Transfer, sale, and possession of alcoholic beverages — when unlawful.
16-6-302. Penalty for sale of alcoholic beverage without license.
16-6-303. Sale of liquor not purchased from state store forbidden — penalty.
16-6-304. Providing alcoholic beverage to intoxicated person prohibited.
16-6-305. Age limit for sale or provision of alcoholic beverages — liability of provider.
16-6-306. Bottle clubs prohibited.
16-6-307. Consumption of alcoholic beverage on druggists' premises prohibited.
16-6-308. Patent medicine prohibition.
16-6-309. Alcoholic beverages administered to institution inmates.
16-6-310. Officer or agent of corporation deemed party to offense.

16-6-311. Occupant of premises deemed party to offense.
16-6-312. Premises where alcoholic beverages illegally sold public nuisance.
16-6-313. Injunction actions.
16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person.

Part 1

Investigations

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

16-6-101. Employment of investigators and prosecuting officers. (1) The department of justice may appoint one or more investigators or prosecuting officers who, under its direction, shall perform the duties it may require.

(2) When requested by the department, the department of justice shall:

(a) investigate the character of an applicant applying for the issuance or transfer of a liquor license and, if applicable, the suitability of a premises or proposed premises to be used in connection with a liquor license;

(b) investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of alcoholic beverages; and

(c) serve as a liaison to local law enforcement authorities in matters relating to alcoholic beverage law enforcement.

History: En. Sec. 90, Ch. 105, L. 1933; re-en. Sec. 2815.150, R.C.M. 1935; Sec. 4-225, R.C.M. 1947; amd. and redes. 4-6-201 by Sec. 39, Ch. 387, L. 1975; R.C.M. 1947, 4-6-201; amd. Sec. 10, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 near beginning of (1), after "department", inserted "of justice" and at end deleted "and who shall be paid such salaries, fees, and expenses as the department may fix"; inserted (2) requiring the Department of Justice, when requested by the Department of Revenue, to investigate when a license application is made, to investigate other matters relating to alcoholic beverages, and to serve as a liaison to local law enforcement; and made minor changes in style. Amendment effective July 1, 1993.

16-6-102. Search warrants. Upon information on oath by a department of justice investigator appointed under this code or by a peace officer showing reasonable cause to believe that alcoholic beverages are unlawfully kept, or kept for unlawful purposes, in any premises, a court may issue a warrant to authorize the investigator or peace officer or any other person named in the warrant to enter and search the entire premises, including to break open any door, lock, fastening, closet, cupboard, box, or other receptacle on the premises that might contain alcoholic beverages.

History: En. Sec. 74, Ch. 105, L. 1933; re-en. Sec. 2815.133, R.C.M. 1935; Sec. 4-208, R.C.M. 1947; amd. and redes. 4-6-203 by Sec. 25, Ch. 387, L. 1975; R.C.M. 1947, 4-6-203; amd. Sec. 11, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 near beginning, before "investigator", inserted "department of justice" and in two places, before reference to premises, deleted reference to building; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Unreasonable searches and seizures, Art. II, sec. 11, Mont. Const.

Searches and seizures generally, Title 46, ch. 5.

16-6-103. Examination of retailer's premises and carriers' cars and aircraft. The department of justice or its representative or a peace officer may at any time examine the premises of a retail licensee to determine whether the law of Montana and the rules of the department or the department of justice are being complied with and also may inspect cars or aircraft of any common carrier system licensed under this code.

History: En. Sec. 26, Ch. 84, L. 1937; Sec. 4-428, R.C.M. 1947; amd. and redes. 4-6-204 by Sec. 101, Ch. 387, L. 1975; R.C.M. 1947, 4-6-204; amd. Sec. 12, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 near beginning, after "department", inserted "of justice", before "may at any time" substituted "a peace officer" for "the sheriff of any county", and near end, after "the department", inserted "or the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Regulation of carriers of property, Title 69, ch. 11, part 4.

16-6-104. Unlawful alcoholic beverage — seizure — forfeiture. (1) Any investigator or peace officer who finds an alcoholic beverage which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this code may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon conviction of the person, the alcoholic beverage and all packages containing the same shall, in addition to any other penalty prescribed by this code, ipso facto be forfeited to the state of Montana.

(2) Any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of alcoholic beverages.

History: (1)En. 4-6-205 by Sec. 22, Ch. 387, L. 1975; amd. Sec. 15, Ch. 496, L. 1977; Sec. 4-6-205, R.C.M. 1947; (2)En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.23, R.C.M. 1935; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965; Sec. 4-318, R.C.M. 1947; amd. and redes. 4-4-103 by Sec. 56, Ch. 387, L. 1975; Sec. 4-4-103, R.C.M. 1947; R.C.M. 1947, 4-4-103(part), 4-6-205; amd. Sec. 3, Ch. 47, L. 1983; amd. Sec. 33, Ch. 68, L. 1987.

Cross-References

Procedure in regard to seized property, Title 46, ch. 5, part 3.

16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance. Whenever an investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law shall find in any motor vehicle, vessel, boat, canoe, or conveyance of any description an alcoholic beverage which is unlawfully kept or had or kept or held for unlawful purposes contrary to the provisions of this code, he may forthwith seize the alcoholic beverage and packages in which the same is contained and the motor vehicle, vessel, boat, canoe, or conveyance in which the alcoholic beverage is found. Upon the conviction of the occupant or person in charge of the motor vehicle, vessel, boat, canoe, or conveyance, or of any other person, for having or keeping such alcoholic beverages contrary to any of the provisions of this code in any such vehicle, vessel, boat, canoe, or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence imposed under authority of law, declare the alcoholic beverage or any part thereof so seized and the package in which the same is contained to be forfeited to the state of Montana. The court may in and by decree further declare the motor vehicle, vessel, boat, canoe, or conveyance seized to be forfeited to the state of Montana.

History: En. Sec. 75, Ch. 105, L. 1933; re-en. Sec. 2815.134, R.C.M. 1935; Sec. 4-209, R.C.M. 1947; amd. and redes. 4-6-207 by Sec. 26, Ch. 387, L. 1975; R.C.M. 1947, 4-6-207.

Cross-References

Procedure in regard to seized property, Title 46, ch. 5, part 3.

16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing. (1) If an alcoholic beverage is found by a department of justice investigator or a peace officer in any place in quantities that satisfy the investigator or peace officer that the alcoholic beverage is being kept contrary to this code, the investigator or peace officer may seize and remove, by force if necessary, any alcoholic beverage found and the packages in which the alcoholic beverage was kept and immediately turn the alcoholic beverage over to the department.

(2) The department shall determine if the seized alcoholic beverage is suitable for resale in a state liquor store. If the department has determined that the seized alcoholic beverage is suitable for resale, the department shall commence an administrative action against the owner of the alcoholic beverage. All seized alcoholic beverages found to be unsuitable for sale in a state liquor store must be destroyed by the department.

(3) A notice and opportunity for hearing must be given in accordance with the Montana Administrative Procedure Act, except that the notice must be published in the county where the alcoholic beverage was seized if a newspaper is published in the county.

(4) The notice must show the date and place of seizure, the name of the person or persons actually or apparently in possession or control of the alcoholic beverage if the person was present at the time of the seizure, and the reasons the department claims the right to the possession of the alcoholic beverage. The notice must also demand that all persons who claim any right to the possession of the alcoholic beverage show the nature of their claim or claims, that the hearing examiner declare the alcoholic beverage contraband, and that the hearing examiner order the alcoholic beverage be forfeited to the state.

History: En. Sec. 76, Ch. 105, L. 1933; re-en. Sec. 2815.135, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1945; Sec. 4-210, R.C.M. 1947; amd. and redes. 4-6-208 by Sec. 27, Ch. 387, L. 1975; R.C.M. 1947, 4-6-208; amd. Sec. 14, Ch. 20, L. 1985; amd. Sec. 1, Ch. 83, L. 1985; amd. Sec. 13, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 in (1), near beginning before "investigator", inserted "department of justice"; in (2), in two places, inserted "in a state liquor store"; and made minor changes in style. Amendment effective July 1, 1993.

16-6-107. Disposal of forfeited alcoholic beverages — report. (1) If a court or hearing examiner orders the forfeiture of alcoholic beverages under this code or if a claimant to an alcoholic beverage under 16-6-105 or 16-6-106 fails to establish the claimant's right to the alcoholic beverage, the alcoholic beverage in question and the packages in which the alcoholic beverage is kept must be delivered to the department. The department shall determine the market value of each forfeited alcoholic beverage found to be suitable for sale in the state liquor stores and shall pay the amount determined to the state treasurer after deducting any expenses incurred by the department for transporting the forfeited alcoholic beverage to the state liquor warehouse. The alcoholic beverage suitable for sale in a state liquor store must be taken into stock by the department and sold under the provisions of this code. All alcoholic beverages found to be unsuitable for sale in state liquor stores must be destroyed by the department.

(2) If an alcoholic beverage is seized by a peace officer, the officer shall report to the department in writing the particulars of the seizure.

History: En. Sec. 77, Ch. 105, L. 1933; re-en. Sec. 2815.136, R.C.M. 1935; Sec. 4-211, R.C.M. 1947; amd. and redes. 4-6-209 by Sec. 28, Ch. 387, L. 1975; R.C.M. 1947, 4-6-209; amd. Sec. 2, Ch. 83, L. 1985; amd. Sec. 14, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 in (1), in third sentence after "sale", inserted "in a state liquor store"; and made minor changes in style. Amendment effective July 1, 1993.

16-6-108. Inspection of carriers' records. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this code, the department or the department of justice or any person appointed by either department in writing for the purpose may inspect the freight and express books and records and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state.

History: En. Sec. 78, Ch. 105, L. 1933; re-en. Sec. 2815.137, R.C.M. 1935; Sec. 4-212, R.C.M. 1947; amd. and redes. 4-6-210 by Sec. 29, Ch. 387, L. 1975; R.C.M. 1947, 4-6-210; amd. Sec. 15, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 near beginning, after "the department", inserted "or the department of justice" and after "appointed by" substituted "either department" for "it". Amendment effective July 1, 1993.

Cross-References

Regulation of carriers of property, Title 69, ch. 11, part 4.

16-6-109. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier and every officer or employee of a company or common carrier who neglects or refuses to produce and submit for inspection any book, record, or document referred to in 16-6-108 when requested to do so by the department or the department of justice or by a person appointed by either department is guilty of an offense against this code.

History: En. Sec. 79, Ch. 105, L. 1933; re-en. Sec. 2815.138, R.C.M. 1935; Sec. 4-213, R.C.M. 1947; amd. and redes. 4-6-211 by Sec. 30, Ch. 387, L. 1975; R.C.M. 1947, 4-6-211; amd. Sec. 16, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 near end, after "the department", inserted "or the department of justice" and after "appointed by" substituted "either department" for "it"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Penalty, 16-6-314.

Part 2
Prosecutions

16-6-201. Jurisdiction of courts. As to misdemeanor actions, the district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this code.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.47, R.C.M. 1935; amd. Sec. 9, Ch. 166, L. 1951; Sec. 4-344, R.C.M. 1947; amd. and redes. 4-6-301 by Sec. 70, Ch. 387, L. 1975; R.C.M. 1947, 4-6-301.

16-6-202. Appeal. An appeal shall lie from any conviction or order made in the prosecution of any offense against any of the provisions of this code, and the practice and procedure on any appeal from any such conviction or order and all proceedings thereon shall be governed by the law applicable to appeal in criminal cases.

History: En. Sec. 89, Ch. 105, L. 1933; re-en. Sec. 2815.149, R.C.M. 1935; Sec. 4-224, R.C.M. 1947; amd. and redes. 4-6-302 by Sec. 38, Ch. 387, L. 1975; R.C.M. 1947, 4-6-302.

Cross-References

Independent tax appeal procedures to be provided, Art. VIII, sec. 7, Mont. Const.

Criminal appeals and postconviction hearings, Title 46, ch. 20 and 21.

16-6-203. Description of offense. In describing the offense respecting the sale or keeping for sale or other disposal of alcoholic beverages or the having, keeping, giving, purchasing, or consumption of alcoholic beverages in any information, summons, conviction, warrant, or proceeding under this code, it shall be sufficient to state simply the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of alcoholic beverages, without stating:

(1) the name or kind of such alcoholic beverage or the price thereof;

(2) the name of any person to whom it was sold or disposed of or by whom it was taken or consumed or from whom it was purchased or received; or

(3) the quantity of alcoholic beverage, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity.

History: En. Sec. 80, Ch. 105, L. 1933; re-en. Sec. 2815.139, R.C.M. 1935; Sec. 4-214, R.C.M. 1947; amd. and redes. 4-6-303 by Sec. 31, Ch. 387, L. 1975; R.C.M. 1947, 4-6-303.

Cross-References

Complaints, indictments, and informations generally, Title 46, ch. 11.

16-6-204. Defense need not be negatived. The description of any offense under this code, in the words of this code or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this code, may be proved by the defendant but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant.

History: En. Sec. 81, Ch. 105, L. 1933; re-en. Sec. 2815.140, R.C.M. 1935; Sec. 4-215, R.C.M. 1947; amd. and redes. 4-6-304 by Sec. 32, Ch. 387, L. 1975; R.C.M. 1947, 4-6-304.

16-6-205. Sufficiency of evidence. In any prosecution under this code for the sale or keeping for sale or other disposal of alcoholic beverages or the having, keeping, giving, purchasing, or consuming of alcoholic beverages, it shall not be necessary that any witness should depose to the precise description or quantity of the alcoholic beverages sold, disposed of, kept, had, given, purchased, or consumed or the precise consideration (if any) received therefor or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt.

History: En. Sec. 82, Ch. 105, L. 1933; re-en. Sec. 2815.141, R.C.M. 1935; Sec. 4-216, R.C.M. 1947; amd. and redes. 4-6-305 by Sec. 33, Ch. 387, L. 1975; R.C.M. 1947, 4-6-305.

Cross-References

Montana evidence statutes and rules, Title 26, ch. 1, 2, and 10.

16-6-206. Proof of violation. In proving the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of an alcoholic beverage, it shall not be necessary in any prosecution to show that any money actually passed or any alcoholic beverage was actually consumed if the court hearing the case is satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place or that any consumption of an alcoholic beverage was about to take place. Proof of consumption or intended consumption of an alcoholic beverage on premises on which such consumption is prohibited by some person not authorized to consume an alcoholic beverage thereon shall be evidence that such alcoholic beverage was sold, given to, or purchased by the person consuming or being about to consume or carrying away the same, as against the occupant of the premises.

History: En. Sec. 83, Ch. 105, L. 1933; re-en. Sec. 2815.142, R.C.M. 1935; Sec. 4-217, R.C.M. 1947; amd. and redes. 4-6-306 by Sec. 34, Ch. 387, L. 1975; R.C.M. 1947, 4-6-306.

16-6-207. Analyst's report as prima facie evidence of contents. In any prosecution under this code or the rules made thereunder, production by a police officer, policeman, constable, inspector, or peace officer of a certificate or report signed or purporting to be signed by a United States or state analyst as to the analysis or ingredients of any alcoholic beverage or other fluid or any preparation, compound, or substance, such certificate or report shall be prima facie evidence of the facts stated in such certificate or report and of the authority of the person giving or making the same without any proof of appointment or signature.

History: En. Sec. 84, Ch. 105, L. 1933; re-en. Sec. 2815.143, R.C.M. 1935; Sec. 4-218, R.C.M. 1947; amd. and redes. 4-6-307 by Sec. 35, Ch. 387, L. 1975; R.C.M. 1947, 4-6-307.

16-6-208. Inference of intoxicating beverage. The court trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the alcoholic beverage in question is intoxicating from the fact that a witness described it as intoxicating or by a name which is commonly applied to an intoxicating beverage.

History: **En. Sec. 85, Ch. 105, L. 1933; re-en. Sec. 2815.144, R.C.M. 1935; Sec. 4-219, R.C.M. 1947; amd. and redes. 4-6-308 by Sec. 36, Ch. 387, L. 1975; R.C.M. 1947, 4-6-308.**

Cross-References

Definition and requisites of an inference, 26-1-501, 26-1-502.

16-6-209. Inferences of fact from evidence found. Upon the hearing of any charge of selling or purchasing an alcoholic beverage or of unlawfully having or keeping an alcoholic beverage contrary to any of the provisions of this code, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of alcoholic beverage found in the possession of the person accused or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by him and from the frequency with which the alcoholic beverage is received thereat or therein or is removed therefrom and from the circumstances under which it is kept or dealt with.

History: **En. Sec. 86, Ch. 105, L. 1933; re-en. Sec. 2815.145, R.C.M. 1935; Sec. 4-220, R.C.M. 1947; amd. and redes. 4-6-309 by Sec. 37, Ch. 387, L. 1975; R.C.M. 1947, 4-6-309.**

Cross-References

Definition and requisites of an inference, 26-1-501, 26-1-502.

Part 3

Miscellaneous Prohibitions and Penalties

16-6-301. Transfer, sale, and possession of alcoholic beverages — when unlawful. (1) Except as provided by this code, no person shall, within the state, by himself, his clerk, servant, or agent, expose or keep for sale or, directly or indirectly or upon any pretense or upon any device, sell or offer to sell or, in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person any alcoholic beverage.

(2) No person shall have or keep any alcoholic beverage which has not been purchased within the state of Montana. Nothing in this code shall prohibit any person entering this state from any other state or from any foreign country from having in his possession not to exceed 3 wine gallons of alcoholic beverage which beverage shall have been purchased in another state or foreign country, but no person claiming to have so entered the state shall at any time have in his possession more than 3 wine gallons of alcoholic beverage which shall not have been purchased within the state of Montana. This subsection shall not apply to the department or to the keeping or having of alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of such alcoholic beverages or to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures, or preparations where such having and keeping is authorized by this code.

(3) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of alcoholic beverages seized under execution or other judicial or extrajudicial process or to sales under executions or other judicial or extrajudicial process to the department or a licensee.

(4) Except as provided in this code, no person shall, within the state, by himself, his clerk, servant, or agent:

(a) attempt to purchase any alcoholic beverage;

(b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

(c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage.

History: (1) thru (3)En. Sec. 45, Ch. 105, L. 1933; amd. Sec. 1, Ch. 166, L. 1935; re-en. Sec. 2815.104, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1957; Sec. 4-150, R.C.M. 1947; amd. and redes. 4-1-201 by Sec. 16, Ch. 387, L. 1975; Sec. 4-1-201, R.C.M. 1947; (4)En. Sec. 49, Ch. 105, L. 1933; re-en. Sec. 2815.108, R.C.M. 1935; Sec. 4-154, R.C.M. 1947; amd. and redes. 4-6-101 by Sec. 19, Ch. 387, L. 1975; Sec. 4-6-101, R.C.M. 1947; R.C.M. 1947, 4-1-201, 4-6-101; amd. Sec. 34, Ch. 68, L. 1987.

16-6-302. Penalty for sale of alcoholic beverage without license. Any person who has not been issued a license under this code who sells or keeps for sale any alcoholic beverage is guilty of a felony and upon conviction thereof is punishable by a fine of not less than $1,000 or more than $5,000 or by imprisonment in the state prison for not less than 1 or more than 5 years or by both such fine and imprisonment.

History: En. Sec. 18, Ch. 84, L. 1937; Sec. 4-420, R.C.M. 1947; amd. and redes. 4-4-407 by Sec. 97, Ch. 387, L. 1975; R.C.M. 1947, 4-4-407; amd. Sec. 4, Ch. 5, L. 1979.

16-6-303. Sale of liquor not purchased from state store forbidden — penalty. It is unlawful for any licensee to sell or keep for sale or have on his premises for any purpose whatever any liquor except that purchased from the state liquor store, and any licensee found in possession of or selling and keeping for sale any liquor which was not purchased from a state liquor store shall, upon conviction, be punished by a fine of not less than $500 or more than $1,500, by imprisonment for not less than 3 months or more than 1 year, or by both such fine and imprisonment. If the department is satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by the licensee or by his agents, servants, or employees, the department shall immediately revoke the license.

History: En. Sec. 17, Ch. 84, L. 1937; Sec. 4-419, R.C.M. 1947; amd. and redes. 4-6-102 by Sec. 96, Ch. 387, L. 1975; amd. Sec. 14, Ch. 496, L. 1977; R.C.M. 1947, 4-6-102.

Cross-References

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

16-6-304. Providing alcoholic beverage to intoxicated person prohibited. (1) No store manager, retail licensee, or any employee of a store manager or retail licensee may sell any alcoholic beverage or permit any alcoholic beverage to be sold to any person apparently under the influence of an alcoholic beverage.

(2) No person may give an alcoholic beverage to a person apparently under the influence of alcohol.

History: En. Sec. 55, Ch. 105, L. 1933; re-en. Sec. 2815.114, R.C.M. 1935; Sec. 4-160, R.C.M. 1947; amd. and redes. 4-6-103 by Sec. 23, Ch. 387, L. 1975; R.C.M. 1947, 4-6-103.

Cross-References

Age restriction, Art. II, sec. 14, Mont. Const.

Unlawful to sell or give alcholic beverages — persons actually or apparently intoxicated, 16-3-301.

16-6-305. Age limit for sale or provision of alcoholic beverages — liability of provider. (1) (a) Except in the case of an alcoholic beverage provided in a nonintoxicating quantity to a person under 21 years of age by his parent or guardian, physician or dentist for medicinal purposes, a licensed pharmacist upon the prescription of a physician, or an ordained minister or priest in connection with a religious observance, a person may not sell or otherwise provide an alcoholic beverage to a person under 21 years of age.

(b) A parent, guardian, or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age.

(c) For the purposes of this section, "intoxicating quantity" means a quantity of an alcoholic beverage that is sufficient to produce:

(i) a blood, breath, or urine alcohol concentration in excess of 0.05; or

(ii) substantial or visible mental or physical impairment.

(2) Any person is guilty of a misdemeanor who:

(a) invites a person under the age of 21 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for the person;

(b) permits the person in a public place where an alcoholic beverage is sold to treat, give, or purchase alcoholic beverages for him; or

(c) holds out the person to be 21 years of age or older to the owner of the establishment or his or her employee or employees.

(3) It is unlawful for any person to fraudulently misrepresent his or her age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card.

(4) A person 21 years of age or older who violates the provisions of subsection (1)(b) is, in addition to applicable criminal penalties, subject to civil liability for damages resulting from a tortious act committed by the person to whom the intoxicating substance was sold or provided if the act is judicially determined to be the result of the intoxicated condition created by the violation.

History: (1)En. Sec. 56, Ch. 105, L. 1933; re-en. Sec. 2815.115, R.C.M. 1935; amd. Sec. 1, Ch. 240, L. 1971; amd. Sec. 2, Ch. 94, L. 1973; Sec. 4-161, R.C.M. 1947; amd. and redes. 4-6-104 by Sec. 24, Ch. 387, L. 1975; Sec. 4-6-104, R.C.M. 1947; (2)En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; Sec. 4-6-404, R.C.M. 1947; R.C.M. 1947, 4-6-104, 4-6-404(part); amd. Sec. 1, Ref. 74, app. Nov. 7, 1978; (3)En. Sec. 1, Ch. 26, L. 1979; amd. Sec. 4, Ch. 186, L. 1979; amd. Sec. 35, Ch. 68, L. 1987; amd. Sec. 2, Ch. 217, L. 1987; amd. Sec. 1, Ch. 448, L. 1989.

Compiler's Comments

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Age restrictions, Art. II, sec. 14, Mont. Const.

Unlawful to sell or give alcoholic beverages — persons under 21 years old, 16-3-301.
Penalty, 16-6-314.
Adults giving or selling alcoholic beverage to children or encouraging its use, 45-5-622, 45-5-623.
Possession of alcoholic beverages by children, 45-5-624.

16-6-306. Bottle clubs prohibited. The operation of alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation, or association. A bottle club is defined as any person, persons, partnership, firm, corporation, or association maintaining premises not licensed for the sale of alcoholic beverages, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic beverages, or otherwise furnishing premises for such purposes and from which they would derive revenue.

History: En. Sec. 1, Ch. 200, L. 1959; amd. Sec. 1, Ch. 109, L. 1963; Sec. 4-172, R.C.M. 1947; redes. 4-6-105 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-105; amd. Sec. 36, Ch. 68, L. 1987.

16-6-307. Consumption of alcoholic beverage on druggists' premises prohibited. No person within the state of Montana shall consume any alcoholic beverage on any premises where an alcoholic beverage is kept for sale by a druggist, nor shall any druggist permit any alcoholic beverage to be consumed on such premises.

History: En. Sec. 51, Ch. 105, L. 1933; re-en. Sec. 2815.110, R.C.M. 1935; Sec. 4-156, R.C.M. 1947; amd. and redes. 4-6-106 by Sec. 20, Ch. 387, L. 1975; R.C.M. 1947, 4-6-106.

Cross-References
Regulation of pharmacists, Title 37, ch. 7.

16-6-308. Patent medicine prohibition. From and after the date of notification under 16-1-202(3), any person within the state selling or keeping for sale any such proprietary or patent medicine, extract, essence, tincture, or preparation so prohibited shall be guilty of an offense under this code.

History: En. Sec. 36, Ch. 105, L. 1933; re-en. Sec. 2815.95, R.C.M. 1935; Sec. 4-141, R.C.M. 1947; amd. and redes. 4-1-203 by Sec. 15, Ch. 387, L. 1975; R.C.M. 1947, 4-1-203(part).

Cross-References
Penalty, 16-6-314.

16-6-309. Alcoholic beverages administered to institution inmates. No alcoholic beverage shall be administered by any person under 16-1-204 except to bona fide patients or inmates of the institution of which he is in charge, and every person in charge of an institution who administers alcoholic beverages in evasion or violation of this code shall be guilty of an offense against this code.

History: En. Sec. 34, Ch. 105, L. 1933; re-en. Sec. 2815.93, R.C.M. 1935; amd. Sec. 9, Ch. 154, L. 1965; Sec. 4-139, R.C.M. 1947; amd. and redes. 4-1-205 by Sec. 13, Ch. 387, L. 1975; R.C.M. 1947, 4-1-205(part); amd. Sec. 37, Ch. 68, L. 1987.

Cross-References
Penalty, 16-6-314.
Distribution to patients or inmates at state custodial institutions — misdemeanor, 53-1-103.

16-6-310. Officer or agent of corporation deemed party to offense. Where an offense against this code is committed by a corporation, the officer or agent of the corporation in charge of the premises in which the offense is committed shall prima facie be deemed to be a party to the offense so committed and shall be personally liable to the penalties prescribed for the offense as a principal offender. Nothing in this section shall relieve the corporation or the person who actually committed the offense from liability therefor.

History: En. Sec. 72, Ch. 105, L. 1933; re-en. Sec. 2815.131, R.C.M. 1935; Sec. 4-206, R.C.M. 1947; redes. 4-6-107 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-107.

Cross-References

Criminal liability for acts committed by or for another, Title 45, ch. 2, part 3.

16-6-311. Occupant of premises deemed party to offense. Upon proof of the fact that an offense against this code has been committed by any person in the employ of the occupant of any house, shop, room, or other premises in which the offense is committed or by any person who is suffered by the occupant to be or remain in or upon such house, shop, room, or premises or to act in any way for the occupant, the occupant shall prima facie be deemed to be a party to the offense so committed and shall be liable to the penalties prescribed for the offense as a principal offender, notwithstanding the fact that the offense was committed by a person who is not proved to have committed it under or by the direction of the occupant. Nothing in this section shall relieve the person actually committing the offense from liability therefor.

History: En. Sec. 73, Ch. 105, L. 1933; re-en. Sec. 2815.132, R.C.M. 1935; Sec. 4-207, R.C.M. 1947; redes. 4-6-108 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-6-108.

Cross-References

Criminal liability for acts committed by or for another, Title 45, ch. 2, part 3.

16-6-312. Premises where alcoholic beverages illegally sold public nuisance. Any room, house, building, boat, vehicle, structure, or place where alcoholic beverages are knowingly manufactured, sold, or bartered in violation of this code or 45-8-111 and all property knowingly kept and used in maintaining the same is hereby declared to be a public nuisance, and any person who maintains such a nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100 or more than $500 and be imprisoned not less than 30 days or more than 6 months.

History: En. Sec. 8, Ch. 30, L. 1937; Sec. 4-238, R.C.M. 1947; amd. and redes. 4-6-401 by Sec. 43, Ch. 387, L. 1975; amd. Sec. 16, Ch. 496, L. 1977; R.C.M. 1947, 4-6-401.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

16-6-313. Injunction actions. An action to enjoin any nuisance defined in this code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear, by affidavits or otherwise, to the satisfaction of the court or judge in vacation that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this code constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no alcoholic beverages shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place or any part thereof. Upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for 1 year thereafter. The court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than $500 or more than $1,000, payable to the state of Montana and conditioned that alcoholic beverages will not thereafter be manufactured, sold, or bartered therein or thereon and that he will pay all fines, costs, and damages that may be assessed for any violations of this code upon said property.

History: En. Sec. 48, Ch. 106, L. 1933; amd. Sec. 16, Ch. 46, Ex. L. 1933; re-en. Sec. 2815.49, R.C.M. 1935; Sec. 4-346, R.C.M. 1947; amd. and redes. 4-6-402 by Sec. 71, Ch. 387, L. 1975; R.C.M. 1947, 4-6-402; amd. Sec. 39, Ch. 68, L. 1987.

Cross-References

Injunctions generally, Title 27, ch. 19.

Injunction against nuisance, 27-30-103.

Action to abate public nuisance, 45-8-112.

16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person. (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as is herein otherwise provided.

(2) If a retail licensee is convicted of an offense under this code, his license shall be immediately revoked or, in the discretion of the department, such other sanction imposed as may be authorized under 16-4-406.

(3) A person under 21 years of age who violates 16-3-301(4) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2).

History: En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973; Sec. 4-439, R.C.M. 1947; amd. and redes. 4-6-404 by Sec. 104, Ch. 387, L. 1975; R.C.M. 1947, 4-6-404(part); amd. Sec. 5, Ch. 186, L. 1979; amd. Sec. 2, Ch. 105, L. 1985; amd. Sec. 3, Ch. 217, L. 1987; amd. Sec. 22, Ch. 83, L. 1989.

Compiler's Comments

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Unlawful possession of intoxicating substance — interference with sentence or court order, 45-5-624.

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

Commutation of juvenile's sentence, transfer to juvenile correctional facility, 52-5-111.

CHAPTERS 7 THROUGH 9

RESERVED

CHAPTER 10

REGULATION OF CIGARETTE MARKETING

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16-10-402. Injunctive and other civil relief.
16-10-403. Revocation or suspension of license or permit.

Part 1

Policy and Definitions

16-10-101. Short title. This chapter shall be known, designated, and cited as "The Montana Cigarette Sales Act".

History: En. Sec. 1, Ch. 258, L. 1965; R.C.M. 1947, 51-302.

16-10-102. Declaration of policy. The advertising, offering for sale, or sale of cigarettes below cost in the retail and wholesale trades with the intent of injuring competitors or lessening competition is an unfair and deceptive business practice. It is the policy of the state to promote the public welfare, and it is the purpose of this chapter to carry out that policy in the public interest, stabilize the sale of cigarettes, and maximize and protect the state revenues from this source.

History: En. Preamble, Ch. 258, L. 1965; R.C.M. 1947, 51-301; amd. Sec. 5, Ch. 5, L. 1979.

Cross-References

Consumer protection and unfair trade practices, Title 30, ch. 14, parts 1 and 2.

16-10-103. Definitions. When used in this chapter, the following words and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Administrative agency" or "department" shall mean the state department of revenue of Montana and, where the meaning of the context so requires, all deputies and employees duly authorized by such department.

(2) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower.

(3) "Business day" shall mean any day other than a Sunday or a legal holiday.

(4) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(5) (a) The term "cost to the retailer" shall mean the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer" as evidenced by the standards and methods of accounting regularly employed by the retailer in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance, and advertising, including any rebates or concessions, no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the retailer, expressed as a percentage and applied to the "basic costs of cigarettes"; provided, however, that any retailer who purchases from the manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining "cost to the retailer" pursuant to this subsection, add the "cost of doing business by the wholesaler", as determined in subsection (6)(b), to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer".

(b) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" shall be presumed to be 10% of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer" who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler shall be presumed to be 10% of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler".

(6) (a) The term "cost to the wholesaler" shall mean the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler" as evidenced by the standards and methods of accounting regularly employed by the wholesaler in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance, and advertising. The cost of doing business by a wholesaler shall also include any rebates, patronage dividends, or concessions, no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the wholesaler, expressed as a percentage and applied to the "basic cost of cigarettes".

(b) In the absence of the filing with the department of proof which the department declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be 5% of the "basic cost of cigarettes" to the wholesaler plus cartage to the retail outlet if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, shall be considered to be 3/4 of 1% of the "basic cost of cigarettes" to the wholesaler.

(7) "Person" shall mean and include any individual, firm, association, company, partnership, corporation for profit or nonprofit corporation, joint-stock company, club, agency, syndicate, cooperative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, and conservator.

(8) "Retailer" shall mean and include any person who operates a store, stand, booth, or concession for the purpose of making sales of cigarettes at retail.

(9) "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale, and distribution, in any manner or by any means whatever.

(10) "Sell at retail", "sale at retail", and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(11) "Sell at wholesale", "sale at wholesale", and "wholesale sales" shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(12) (a) "Wholesaler" shall include any person who:

(i) purchases cigarettes directly from the manufacturer;

(ii) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers; or

(iii) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and distribution of cigarettes.

(b) Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this chapter.

History: En. Sec. 2, Ch. 258, L. 1965; amd. Sec. 1, Ch. 130, L. 1967; amd. Sec. 16, Ch. 391, L. 1973; R.C.M. 1947, 51-303.

16-10-104. Powers of department. In addition to the penalties and rights imposed and set forth in 16-10-401 and 16-10-402, the department shall enforce the provisions of this chapter. The department shall have the power to adopt, amend, and repeal rules necessary to enforce and administer the provisions of this chapter.

History: En. Sec. 13, Ch. 258, L. 1965; R.C.M. 1947, 51-314(part).

Cross-References

Rulemaking under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Part 2

Sales Price of Cigarettes

16-10-201. Wholesaler-to-wholesaler sales. When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter "cost to the wholesaler", as provided by 16-10-103, except that no such sale shall be made at a price less than the "basic cost of cigarettes", as defined in 16-10-103, but the latter wholesaler, upon resale to a retailer, shall be considered to be the wholesaler governed by the provisions of 16-10-103(6).

History: En. Sec. 4, Ch. 258, L. 1965; R.C.M. 1947, 51-305.

16-10-202. Repealed. Sec. 7, Ch. 130, L. 1991.

History: En. Sec. 5, Ch. 258, L. 1965; R.C.M. 1947, 51-306.

16-10-203. Sales to meet competition permitted. (1) (a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in this chapter.

(b) Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler as prescribed in this chapter.

(c) The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in 16-10-304 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(2) In the absence of proof of the "price of a competitor" under this section, the "lowest cost to the retailer" or the "lowest cost to the wholesaler", as the case may be, determined by any "cost survey" made pursuant to 16-10-303, may be considered to be the "price of a competitor" within the meaning of this section.

History: En. Sec. 7, Ch. 258, L. 1965; R.C.M. 1947, 51-308.

16-10-204. Determining cost — fictitious prices — free merchandise. (1) In determining "cost to the retailer" and "cost to the wholesaler", the department or a court shall receive and consider as bearing on the bona fides of such cost evidence tending to show that any person complained against under any of the provisions of this chapter purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price or upon terms or in such a manner or under such invoices as to conceal the true cost, discounts, or terms of purchase and shall also receive and consider as bearing on the bona fides of such cost evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(2) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer thereof for display, advertising, promotion purposes, or otherwise shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

History: En. Sec. 9, Ch. 258, L. 1965; R.C.M. 1947, 51-310.

16-10-205. Purchases outside ordinary trade channels. In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt, or closeout sale or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased through the ordinary channels of trade.

History: En. Sec. 10, Ch. 258, L. 1965; R.C.M. 1947, 51-311.

Part 3

Unlawful Practices — Exceptions

16-10-301. Sales below cost — evidence of unlawful intent. (1) It shall be unlawful and a violation of this chapter:

(a) for any retailer or wholesaler with intent to injure a competitor or substantially lessen competition to:

(i) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as the case may be;

(ii) offer a rebate in price, give a rebate in price, offer a concession of any kind, or give a concession of any kind or nature whatever in connection with the sale of cigarettes which are sold by said wholesaler or retailer in the ordinary course of his trade or business if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which such rebate or concession may lawfully be given;

(b) for any retailer to:

(i) induce or attempt to induce or procure or attempt to procure the purchase of cigarettes at a price less than "cost to the wholesaler", as defined in this chapter;

(ii) induce or attempt to induce or procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

(2) Evidence of advertisement, offer to sell, or sale of cigarettes by any retailer or wholesaler at less than cost to him or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes which are sold by said wholesaler or retailer in the ordinary course of his trade or business, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which such rebate or concession may lawfully be given, or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer shall be prima facie evidence of intent to injure competitors or substantially lessen competition.

History: En. Sec. 3, Ch. 258, L. 1965; R.C.M. 1947, 51-304(1), (2), (4).

Cross-References

Sales to meet competition permitted, 16-10-203.

Penalty, 16-10-401.

16-10-302. Illegal contracts. Any contract, expressed or implied, made by any person in violation of any of the provisions of this chapter is declared to be an illegal and void contract, and no recovery thereon shall be had.

History: En. Sec. 8, Ch. 258, L. 1965; R.C.M. 1947, 51-309.

Cross-References

Illegality in contracts, 28-2-701 through 28-2-722, 28-2-803.

16-10-303. Cost survey as evidence. Where a cost survey pursuant to cost accounting practices, including those defined in 16-10-103(6)(a), has been made by the department or by a trade association or other industry group for the trading area in which the offense is committed to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler", said cost survey shall be considered to be competent evidence for use in proving the cost to the person complained against within the provisions of this chapter.

History: En. Sec. 11, Ch. 258, L. 1965; R.C.M. 1947, 51-312.

16-10-304. Exceptions. The provisions of this chapter shall not apply to sales at retail or sales at wholesale made:

(1) as an isolated transaction and not in the usual course of business;

(2) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or sold as imperfect or damaged and said advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold;

(3) where cigarettes are sold upon the final liquidation of a business; or

(4) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

History: En. Sec. 6, Ch. 258, L. 1965; R.C.M. 1947, 51-307.

16-10-305. Repealed. Sec. 7, Ch. 130, L. 1991.

History: En. Sec. 1, Ch. 139, L. 1985.

Part 4
Enforcement

16-10-401. Penalty for sales at less than cost. Any retailer or wholesaler who violates the provisions of 16-10-301 shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than $500 for each such offense. Any individual who, as a director, officer, partner, member, or agent of any person violating the provisions of this chapter, assists or aids, directly or indirectly, in such violation shall, equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

History: En. Sec. 3, Ch. 258, L. 1965; R.C.M. 1947, 51-304(3).

Cross-References

Criminal liability for acts committed by or for another, Title 45, ch. 2, part 3.

16-10-402. Injunctive and other civil relief. (1) In addition to penalties provided by 16-10-401, any person injured by any violation of this chapter or any trade association which is representative of such a person may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin such violation. If in such action a violation of this chapter shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorney's fee. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(2) In the event no injunctive relief is sought or required, any person injured by a violation of this chapter may maintain an action for damages alone in any court of competent jurisdiction. The measure of damages in such action shall be the same as prescribed in subsection (1) of this section.

History: En. Sec. 12, Ch. 258, L. 1965; R.C.M. 1947, 51-313.

Cross-References

Costs and attorney fees generally, Title 25, ch. 10.

Injunctions generally, Title 27, ch. 19.

16-10-403. Revocation or suspension of license or permit. (1) The department is given full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state of Montana upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee or permittee to comply with any of the provisions of this chapter.

(2) No license or licenses shall be suspended or revoked except upon notice to the licensee and after a hearing prescribed by said department at its principal office. The department, upon a finding by it that the licensee has failed to comply with any provisions of this chapter or any rule promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than 5 or more than 20 consecutive business days and, in the case of a second or plural offender, shall

suspend said license or licenses for a period of not less than 20 consecutive business days or more than 12 months, and in the event the department finds the offender has been guilty of willful and persistent violations, it may revoke such licensee's license or licenses.

(3) Any person whose license or licenses have been so revoked may apply to the department at the expiration of 1 year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by the department if it shall appear to the satisfaction of said department that the licensee will comply with the provisions of this chapter and the rules promulgated thereunder.

(4) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever. Nor shall any disciplinary proceedings or action be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the provisions of the "cigarette tax law", as provided in [articles of chapter 11 of the Revised Codes of Montana, 1947].

(5) Any determination by the department and any order of suspension or revocation of a license or licenses thereunder or refusal to reinstate a license or licensee after revocation shall be reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction.

History: En. Sec. 13, Ch. 258, L. 1965; R.C.M. 1947, 51-314(part).

Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Contested cases — notice and hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Montana Rules of Civil Procedure, Title 25, ch. 20.

CHAPTER 11

TAXATION OF TOBACCO PRODUCTS

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16-11-206. Wholesaler's discount — disposition of taxes.

Part 3 — Youth Access to Tobacco Products Control Act

16-11-301. Short title.
16-11-302. Definitions.
16-11-303. License for retail sale of tobacco products.
16-11-304. Signs.
16-11-305. Sale or distribution of tobacco products to persons under 18 years of age prohibited.
16-11-306. Sales from tobacco vending machines.
16-11-307. Distribution of tobacco products in other than sealed packages prohibited.
16-11-308. Penalties.
16-11-309 and 16-11-310 reserved.
16-11-311. Local regulations.
16-11-312. Rulemaking authority.

Chapter Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

Part 1
Tax on Cigarettes

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

16-11-101. Legislative intent. The legislature hereby declares that its intent in enacting 16-11-111 is to enable those who are subject to the taxes imposed by the federal tax laws to avail themselves of the deductions respecting state and local taxes specified in section 164 of the federal Internal Revenue Code of 1954 in computing their taxable income.

History: En. Sec. 2, Ch. 97, L. 1963; R.C.M. 1947, 84-5606.1.

16-11-102. Definitions. (1) As used in this chapter, the following definitions apply, unless the context requires otherwise:

(a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

(b) "Department" means the department of revenue provided for in 2-15-1301.

(c) "Person" means an individual, firm, fiduciary, partnership, corporation, trust, organization, or association, however formed.

(2) As used in this part, the following definitions apply, unless the context requires otherwise:

(a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that he operates for a profit in premises or locations other than his own. That person must be treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer.

(b) "Full face value of insignia" means the total amount of the tax levied under this part.

(c) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under the provisions of this part.

(d) "Licensed retailer" means any person, other than a wholesaler, subjobber, or cigarette vendor, who is licensed under the provisions of this part.

(e) "Licensed subjobber" means a subjobber licensed under the provisions of this part; he must be treated as a wholesaler.

(f) "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

(g) "Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

(h) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

(i) "Retailer" means a person, other than a wholesaler, subjobber, or cigarette vendor, who is engaged in the business of selling cigarettes at retail.

(j) "Sale" and "sell" mean any transfer of cigarettes by sale, as defined by 30-2-106, or by gift, barter, or exchange.

(k) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell the cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers. A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part.

(l) "Wholesaler" means any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells, or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes within this state.

History: **En. Sec. 1, Ch. 140, L. 1969; amd. Sec. 205, Ch. 516, L. 1973; amd. Sec. 1, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.2; amd. Sec. 1, Ch. 130, L. 1991.**

Cross-References

Consumer protection and unfair trade practices, Title 30, ch. 14, parts 1 and 2.

16-11-103. Powers of department. (1) The department shall have the power and authority to prescribe all rules not inconsistent with the provisions of this part for the detailed and efficient administration of this part. All rules and orders promulgated must be published promptly and a copy distributed to each wholesale licensee. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by part 2 of this chapter.

(2) The department and its duly authorized agents are empowered to conduct inquiries and hearings, and any member of the department or any agent is authorized to administer oaths and take testimony under oath relative to the matter of inquiry. The director or an authorized agent may subpoena witnesses and require the production of books, papers, and documents pertinent to the inquiry. The director or the director's agent, after the hearing, shall make findings and an order in writing, which findings and order must be filed in the office of the department and open for public inspection.

(3) The department is authorized to contract with the department of justice for the investigations required under this part. The department may appoint additional assistants and establish an additional division of cigarette enforcement as required to carry out the provisions of this part.

(4) The department and the department of justice are authorized to employ clerical and field assistants necessary to properly administer the provisions of this part.

History: **(1)Ap. p. Sec. 26, Ch. 140, L. 1969; amd. Sec. 219, Ch. 516, L. 1973; Sec. 84-5606.27, R.C.M. 1947; Ap. p. Sec. 7, Ch. 12, Ex. L. 1969; amd. Sec. 254, Ch. 516, L. 1973; Sec. 84-6807, R.C.M. 1947; (2)En. Sec. 22, Ch. 140, L. 1969; amd. Sec. 110, Ch. 405, L. 1973; Sec. 84-5606.23, R.C.M. 1947; (3)En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; Sec. 84-5606.28, R.C.M. 1947; (4)En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973; Sec. 84-5606.30, R.C.M. 1947; R.C.M. 1947,**

84-5606.23, 84-5606.27, 84-5606.28(part), 84-5606.30(part), 84-6807; amd. Sec. 17, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 in (2), in first sentence after "empowered to conduct", deleted "investigations" and after "matter of inquiry" deleted "or investigation"; in (3), after "authorized to", inserted "contract with the department of justice for the investigations required under this part"; in (4), after "department", inserted "and the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Rulemaking under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

16-11-104. Carriers to report cigarette shipments. Every common carrier hauling, transporting, or shipping into or out of the state of Montana from or to any other state any cigarettes shall, if requested by the department, report in writing such shipments or deliveries to the department on forms furnished by the department, giving the date, the person to whom the same was consigned and delivered, the quantity as shown by the bill of lading, and such other information as the department may require. A carrier shall retain for 30 months all pertinent and relevant records necessary for the preparation of this report and any other information the department may require.

History: En. Sec. 19, Ch. 140, L. 1969; amd. Sec. 215, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.20; amd. Sec. 3, Ch. 207, L. 1991.

Cross-References

Regulation of carriers of property, Title 69, ch. 11, part 4.

16-11-105. Rulemaking authority of department of justice. The department of justice may adopt rules to implement 16-11-103, 16-11-118, 16-11-124, 16-11-141, 16-11-142, 16-11-147, and 16-11-149.

History: En. Sec. 28, Ch. 414, L. 1993.

Compiler's Comments

Effective Date: Section 29, Ch. 414, L. 1993, provided that this section is effective April 19, 1993.

16-11-106 through 16-11-110 reserved.

16-11-111. Cigarette sales tax — exemption for sale to tribal member. (1) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is 18 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(2) The tax imposed in subsection (1) does not apply to a cigarette sale if the sale is made:

(a) by a retailer whose establishment is located within the boundaries of an Indian reservation located in Montana; and

(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation where the retail establishment is located.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana

Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a credit or refund. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(2) thru (4); amd. Sec. 1, Ch. 267, L. 1981; amd. Sec. 1, Ch. 608, L. 1983; amd. Sec. 1, Ch. 450, L. 1985; amd. Sec. 1, Ch. 704, L. 1985; amd. Sec. 2, Ch. 681, L. 1989; amd. Sec. 2, Ch. 130, L. 1991; amd. Sec. 25, Ch. 15, Sp. L. July 1992; amd. Sec. 8, Ch. 352, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 352 at beginning of first sentence of (1) inserted "A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business", after "must be" substituted "precollected by the wholesaler" for "collected", and after "Montana" substituted "The tax is" for "upon cigarettes sold or possessed in this state an excise tax of"; inserted (2) clarifying sales to which the tax does not apply; inserted (3) requiring precollection of tax on cigarettes entering a reservation; inserted (4) allowing for wholesaler refund of certain precollected taxes; inserted (5) providing for distribution of tax-free cigarettes; inserted (6) capping the amount of allowable wholesaler refunds; and made minor changes in style. Amendment effective July 1, 1993.

Applicability: Section 15, Ch. 352, L. 1993, provided that the 1993 amendments to this section apply to cigarette sales made by a wholesaler after September 30, 1993.

Cross-References

Intent of 16-11-111, 16-11-101.

Disposition of taxes, 16-11-119.

Percentage of cigarette tax pledged, 17-5-408.

16-11-112. Tax on ultimate consumer. All taxes paid pursuant to 16-11-111 shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. The full face value of the insignia or tax shall be added to the cost of the cigarettes and recovered from the ultimate consumer or user. When the tax is paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax.

History: Ap. p. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; Sec. 84-5606, R.C.M. 1947; Ap. p. Sec. 9, Ch. 140, L. 1969; Sec. 84-5606.10, R.C.M. 1947; R.C.M. 1947, 84-5606(1), 84-5606.10(part).

16-11-113. Tax insignia. (1) Except as provided in this section, the distributor or dealer of any cigarettes shall cause to be securely affixed to the cigarettes the required insignia denoting the applicable tax. A person specifically exempted under the provisions of 16-11-132(2) is not considered to be acting unlawfully under this section.

(2) The insignia must be properly applied prior to sale, under regulations that the department may prescribe.

(3) Wholesalers and retailers licensed under this part may buy, sell, or have in their possession only cigarettes that have on each package the insignia provided for in this part. The insignia provided for in this part may be sold only to and must be affixed only by licensed wholesalers and licensed retailers.

(4) If any cigarettes without the insignia affixed are found in the place of business of any unlicensed wholesaler, retailer, or other person, the presumption is that the cigarettes are kept in that place of business in violation of the provisions of this part.

(5) Except as provided in 16-11-132(2), the insignia provided for in this part must be affixed before the sale of the cigarettes by a wholesaler.

History: (1) thru (3)En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; Sec. 84-5606, R.C.M. 1947; (4)En. Sec. 6, Ch. 140, L. 1969; Sec. 84-5606.7, R.C.M. 1947; (5)En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; Sec. 84-5606.28, R.C.M. 1947; R.C.M. 1947, 84-5606(part), 84-5606.7, 84-5606.28(part); amd. Sec. 1, Ch. 382, L. 1979; amd. Sec. 3, Ch. 130, L. 1991.

16-11-114. Insignia discount. Every licensed wholesaler and licensed retailer shall be entitled to purchase said insignia at full face value less the following percentage of the face value upon payment therefor as defrayment of the costs of affixing insignia and precollecting such tax on behalf of the state of Montana:

(1) 6% for the first 2,580 cartons or portion thereof purchased in any calendar month;

(2) 4% for the next 2,580 cartons or portion thereof purchased in any calendar month; and

(3) 3% for purchases in excess of 5,160 cartons in any calendar month.

History: En. Sec. 11, Ch. 140, L. 1969; R.C.M. 1947, 84-5606.12; amd. Sec. 2, Ch. 267, L. 1981; amd. Sec. 1, Ch. 600, L. 1983.

16-11-115. Tax meter machine — tax stamp-applying machine — purchase of stamps. (1) The department may authorize any wholesaler or retailer of cigarettes licensed under this part to use a tax meter machine to imprint an insignia upon each package of cigarettes imported, sold, or delivered in this state. The insignia must be one approved by the department. Each package of cigarettes imported into or delivered or sold in this state must be marked with the proper insignia of the tax-stamping meter, and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler or retailer licensed under this part. The department shall supervise and check the operation of the tax meter machines. Before using the machine, the operator of the machine shall take the machine's meter to the county treasurer of the county in which the machine is operated. The county treasurer shall set the meter for the number of packages specified and required by the operator. Prior to setting the meter, the county treasurer shall charge the operator the amount of money proper for the setting, less the expense defrayment provided for in 16-11-114. The county treasurer shall collect this amount in advance unless the department has allowed the purchaser credit as provided in 16-11-117. The county treasurer shall report to the department on forms prescribed by it the name of the licensed wholesaler or licensed retailer and the number of packages for which the meter was set and shall forward to the department any amounts collected from the licensee.

(2) (a) The department may authorize a licensed wholesaler or licensed retailer to affix tax stamps to packages of cigarettes with a heat-applied machine approved by the department. The department shall supervise and check the operation of the stamp-applying machine.

(b) Tax stamps applied as provided in this subsection must be purchased from the department, and payment for the stamps must accompany the order unless the department has allowed the purchaser to delay payment as provided in 16-11-117.

History: En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 210, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.13; amd. Sec. 2, Ch. 600, L. 1983; amd. Sec. 4, Ch. 130, L. 1991.

16-11-116. Resale of insignia prohibited — rebate. A wholesaler or retailer may not resell to any other wholesaler or retailer any insignia purchased by him from the department. A wholesaler or retailer who has on hand any meter settings or tax insignia at the time of discontinuing his business of selling cigarettes may apply to the department and be paid the face value of the meter settings or tax insignia less the amount of the expense defrayment allowed by 16-11-114.

History: En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 211, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.14; amd. Sec. 5, Ch. 130, L. 1991.

16-11-117. When payment for insignia due. The department shall permit a licensed wholesaler or licensed retailer to pay for the insignia purchased, or affixation of insignia, within 30 days after the date of purchase and shall require such licensee to file with the department a bond issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state, for such amount as the department may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any 30-day period in the previous calendar year; provided, however, that any newly licensed wholesaler or licensed retailer shall pay on a cash basis for 1 complete calendar year, after which the department may permit him 30 days to pay for the purchase or affixation of insignia and shall require a bond as hereinabove provided.

History: En. Sec. 14, Ch. 140, L. 1969; amd. Sec. 212, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.15.

16-11-118. Records of tax meter users and stampers. All tax meter users and stampers shall keep for 5 years all invoices of cigarettes purchased and imported by them, all receipts issued by them and insignia purchased, and an accurate record of all sales of cigarettes by the tax meter users or stampers, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and destination. The tax meter users or stampers shall permit the department and the department of justice and their assistants, authorized agents, or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine whether the tax meter machine or tax stamp-applying machine has been used as required or the insignia required by this part had been purchased and used or to determine the amount of the tax as may be due or unpaid.

History: En. Sec. 16, Ch. 140, L. 1969; amd. Sec. 214, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.17; amd. Sec. 6, Ch. 130, L. 1991; amd. Sec. 18, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 in second sentence, after "department", inserted "and the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

16-11-119. Disposition of taxes — retirement of bonds. The amount of 11.11% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of corrections and human services for the operation and maintenance of state veterans' nursing homes. All remaining revenue collected under the provisions of 16-11-111, less the expense of collecting the taxes, must, in accordance with the provisions of 15-1-501(6), be deposited as follows: 79.25% in the long-range building program fund in the debt service fund type and 20.25% in the long-range building program fund in the capital projects fund type.

History: En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.30(part); amd. Sec. 3, Ch. 267, L. 1981; amd. Sec. 7, Ch. 281, L. 1983; amd. Sec. 2, Ch. 608, L. 1983; amd. Sec. 2, Ch. 704, L. 1985; amd. Sec. 3, Ch. 681, L. 1989; amd. Sec. 1, Ch. 3, Sp. L. July 1992; amd. Sec. 26, Ch. 15, Sp. L. July 1992; amd. Sec. 29, Ch. 455, L. 1993; amd. Sec. 1, Ch. 548, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 455 near middle inserted "in accordance with the provisions of 15-1-501(6)" and after "be" deleted "paid to the state treasurer and"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 548 at beginning inserted "The amount of 11.11% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of corrections and human services for the operation and maintenance of state veterans' nursing homes"; in second sentence increased percentage deposited to debt service fund type from 70.89% to 79.25% and decreased percentage deposited to capital projects fund type from 29.11% to 20.25%; and made minor changes in style. Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Cross-References

Percentage of cigarette tax pledged to debt service of public bond issues, 17-5-408.

16-11-120. Cigarette licenses. Every wholesaler, subjobber, retailer, or cigarette vendor shall obtain a license from the department before engaging in the business of wholesaler, subjobber, retailer, or cigarette vendor. A separate application and a separate license shall be required for each place of business owned, controlled, or operated by such wholesaler, subjobber, retailer, or cigarette vendor within the state of Montana. Application forms shall require the type and general description of applicant organizations, names of all known owners, and such other pertinent information as the department may require in regularly promulgated regulations.

History: En. Sec. 2, Ch. 140, L. 1969; amd. Sec. 206, Ch. 516, L. 1973; amd. Sec. 2, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.3.

16-11-121. Vending machines not places of business. Cigarette vending machines shall not be considered as places of business per se, but a report of each and all machines shall be made on forms prescribed by the department which shall state the name and address of the cigarette vendor, the assigned location of each machine, with best machine identification available, type of business, and such other information as the department may require for proper administration of this part.

History: En. Sec. 3, Ch. 140, L. 1969; amd. Sec. 207, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.4.

16-11-122. License fees — renewal. (1) Each application for a wholesaler's license shall be accompanied by a fee of $50.

(2) Each application for a subjobber's license shall be accompanied by a fee of $50.

(3) Each application for a retailer's license shall be accompanied by a fee of $5.

(4) These licenses shall be renewed annually upon payment of the annual fee in the amount set forth above and shall be effective for 1 year, without proration, and are not transferable.

History: En. Sec. 4, Ch. 140, L. 1969; amd. Sec. 3, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.5(part).

16-11-123. Display of license. (1) Each license shall be prominently displayed on the licensed premises, and a separate license shall be displayed at each place of business owned, controlled, or operated by such wholesaler, subjobber, retailer, or cigarette vendor.

(2) Each cigarette vendor shall affix a license decal furnished by the department in a prominent position on each vending machine.

History: En. Sec. 4, Ch. 140, L. 1969; amd. Sec. 3, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.5(part).

16-11-124. Disposition of license fees. (1) All license fees collected under the provisions of this part must be deposited with the state treasurer in the general fund.

(2) Each biennium, there must be appropriated to the department and the department of justice an amount justified and reasonable to operate the cigarette enforcement responsibilities of each department.

(3) All expenses charged against the appropriation must be justified by itemized claims coupled with standard accounting reports.

History: En. Sec. 5, Ch. 140, L. 1969; amd. Sec. 208, Ch. 516, L. 1973; amd. Sec. 6, Ch. 286, L. 1977; R.C.M. 1947, 84-5606.6(part); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 351, L. 1989; amd. Sec. 19, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 in (2), after "department", inserted "and the department of justice" and at end substituted "cigarette enforcement responsibilities of each department" for "department's cigarette enforcement division"; and made minor changes in style. Amendment effective July 1, 1993.

16-11-125 through 16-11-130 reserved.

16-11-131. Transporting cigarettes without insignia a misdemeanor — invoices and delivery tickets required — stop and inspection authorized. (1) It is unlawful for a person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any cigarettes that do not bear the insignia (stamps) required by this part, except for a person specifically exempted in 16-11-132(2).

(2) (a) When transporting unstamped cigarettes, a person shall possess invoices or delivery tickets for the cigarettes that show the name and address of the consignor or seller, the name of the consignee or purchaser, and the quantity and brands of the cigarettes being transported. If the cigarettes are consigned to or purchased by a person in this state, the consignee or purchaser must be authorized by 16-11-132 to possess unstamped cigarettes in this state.

(b) The cigarettes transported are subject to seizure, forfeiture, and sale as provided in 16-11-141, 16-11-147, 16-11-158, and this section if:

(i) there are no invoices or delivery tickets;

(ii) the name or address of the consignee or purchaser is falsified; or

(iii) the consignee or purchaser is not authorized to possess unstamped cigarettes.

(3) Transportation of cigarettes from a point outside the state to a point in another state is not a violation of this section if the person transporting the unstamped cigarettes possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, the department of justice, or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this section, the department, its agent, the department of justice, or a peace officer may stop and inspect the vehicle.

(5) A person violating the provisions of this section is guilty of a misdemeanor.

History: En. Sec. 20, Ch. 140, L. 1969; amd. Sec. 216, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.21(part); amd. Sec. 2, Ch. 382, L. 1979; amd. Sec. 9, Ch. 352, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 352 in (1), after "insignia", inserted "(stamps)"; inserted (2) establishing requirements applicable to transporting unstamped cigarettes; inserted (3) regarding transportation of cigarettes from a point outside the state to a point in another state; inserted (4) allowing certain agents and officers to stop and inspect a vehicle that is reasonably believed to be transporting illegal cigarettes; in (5), after "misdemeanor", deleted "and shall be punished as hereinafter provided"; and made minor changes in style. Amendment effective July 1, 1993.

Coordination: Section 13(2), Ch. 352, L. 1993, provided: "If House Bill No. 609 and [this act] are both passed and approved, then the bracketed references to the department of justice in [sections 9 and 10 of this act] [amending 16-11-131 and 16-11-147] are effective. If House Bill No. 609 is not passed and approved, then the bracketed references to the department of justice in [sections 9 and 10] are void." House Bill No. 609 was approved as Ch. 414, L. 1993; therefore, the references to the Department of Justice in (4) are effective.

Applicability: Section 15, Ch. 352, L. 1993, provided that the 1993 amendments to this section apply to cigarette sales made by a wholesaler after September 30, 1993.

16-11-132. Unlawful to sell cigarettes without valid license — exceptions. (1) No person shall sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, unless his license is current and valid under the provisions of this part.

(2) No person shall sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, or retailer who is not licensed under this part or who is not licensed by the state in which he sells, offers to sell, or intends to sell cigarettes, except that a resident wholesaler, resident subjobber, or retailer licensed under the provisions of this chapter may sell cigarettes to a resident or nonresident person, wholesaler, subjobber, or retailer not licensed under this chapter if:

(a) such resident or nonresident person, wholesaler, subjobber, or retailer is exempt from state cigarette taxation provisions;

(b) such resident or nonresident person, wholesaler, subjobber, or retailer furnishes documentary evidence that he is exempt from state cigarette taxation provisions; and

(c) such resident or nonresident person, wholesaler, subjobber, or retailer signs a receipt of purchase for any cigarettes evidencing that he is exempt from state cigarette taxation provisions.

(3) Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 8, Ch. 140, L. 1969; amd. Sec. 1, Ch. 319, L. 1973; R.C.M. 1947, 84-5606.9; amd. Sec. 3, Ch. 382, L. 1979.

16-11-133. Sale and use of cigarettes without insignia unlawful. Every person who sells any package of cigarettes which does not bear the insignia required by this part and every person who uses or consumes a cigarette within this state, taken from a package which does not bear the required insignia, is guilty of a misdemeanor and shall be punished as hereinafter provided, except that a person specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully under this section.

History: En. Sec. 17, Ch. 140, L. 1969; amd. Sec. 12, Ch. 126, L. 1977; R.C.M. 1947, 84-5606.18; amd. Sec. 4, Ch. 382, L. 1979.

16-11-134. Forged license stamp or insignia. Every person who shall make, alter, forge, or counterfeit any license stamp or insignia provided for in this law or who shall assist or be concerned therein or who shall have in his possession any altered, forged, counterfeit, or spurious stamp, license, or insignia with intent to defraud the state is guilty of forgery.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(part).

Cross-References

Penalty, 16-11-146.

Criminal offense of and punishment for forgery, 45-6-325.

16-11-135 through 16-11-140 reserved.

16-11-141. Powers of arrest — search and seizure. The department of justice is a criminal justice agency. Designated agents of the department of justice have peace officer status and may arrest any person violating any provision of this part, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence any unlawful or unlawfully possessed license, stamp, or insignia found in the possession of any person or in any place.

History: En. Sec. 25, Ch. 140, L. 1969; amd. Sec. 112, Ch. 405, L. 1973; amd. Sec. 13, Ch. 126, L. 1977; R.C.M. 1947, 84-5606.26; amd. Sec. 20, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 at end of first sentence substituted "of justice is a criminal justice agency" for "shall administer and enforce this part" and in second sentence, after "agents", inserted "of the department of justice" and substituted "have peace officer status" for "have the powers of peace officers"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Searches and seizures generally, Art. II, sec. 11, Mont. Const.

Search and seizure, Title 46, ch. 5.

Arrest, Title 46, ch. 6.

16-11-142. Duties of county attorneys and peace officers. In the enforcement of this part, the department of justice may call to its assistance, and it is the duty of any county attorney or any peace officer in this state to assist the department of justice in the enforcement of this part.

History: En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.28(part); amd. Sec. 21, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 in two places, after "department", inserted "of justice"; and made minor changes in style. Amendment effective July 1, 1993.

16-11-143. Penalty for unpaid cigarette tax. (1) If any person fails or refuses to pay the tax required by this part when due, the department shall proceed to determine the tax due from such information as the department can obtain and shall assess the tax so determined against such person and notify him of the amount. After such notice such tax shall become due and payable, together with a penalty of 5% of such tax or $5 per day for each day after the date of such notice, whichever is greater.

(2) In the case of any violation of this chapter, the department shall be entitled to sue, in the district where the department maintains its principal office, for the amount of the unpaid tax and costs, including reasonable expense of the department in effecting collection of the unpaid tax. Where the court finds the failure to pay the tax has been willful, the court must, in addition, assess damages in treble the amount of the tax found to be due.

History: En. Secs. 15, 28, Ch. 140, L. 1969; amd. Secs. 213, 221, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.16, 84-5606.29.

16-11-144. Revocation or suspension of license. (1) The department may revoke or suspend the license of any wholesaler, subjobber, retailer, or cigarette vendor for failure to comply with any provision of this part or of The Montana Cigarette Sales Act (Title 16, chapter 10) and with any lawful rule of the department made pursuant to said laws.

(2) Any person aggrieved by such revocation or suspension may apply to the department for a hearing which shall be open to the public and may further appeal to the court.

(3) When a license has been duly revoked, no license shall again issue to such licensee for a period of 1 year thereafter. When a license has been duly suspended, the suspension may be for any period not to exceed 1 year.

(4) Any person who shall sell cigarettes after his license has been revoked or suspended is guilty of a misdemeanor and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 7, Ch. 140, L. 1969; amd. Sec. 209, Ch. 516, L. 1973; amd. Sec. 4, Ch. 445, L. 1975; R.C.M. 1947, 84-5606.8.

Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Contested cases — hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

16-11-145. Place where violations committed a public nuisance. Every person having possession or control of or who maintains a building or place where cigarettes are sold in violation of this part or permits the same to be done in any place or building possessed, controlled, or maintained by him is guilty of maintaining and keeping a nuisance, and the building or place so used, together with the personal property and fixtures used in connection therewith, shall be deemed a nuisance. Such person shall be enjoined and such building or place, personal property, and fixtures abated as a nuisance at the instance of the state.

History: En. Sec. 18, Ch. 140, L. 1969; R.C.M. 1947, 84-5606.19.

Cross-References

Injunctions, Title 27, ch. 19.

Public nuisances — remedies, Title 27, ch. 30, part 2.

16-11-146. Penalty for forged license stamp or insignia. A person found guilty of forgery under 16-11-134 shall be punished by imprisonment in the state prison for not less than 1 year or more than 14 years.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(part).

16-11-147. Seizure and forfeiture of unlawful cigarettes. (1) A motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department of justice, its authorized agent, a sheriff or deputy, or any other peace officer and is subject to forfeiture as provided in subsection (2).

(2) Upon the seizure of any cigarettes and within 2 days after seizure, the person or officer making the seizure shall deliver an inventory of the property

seized to the person from whom the seizure was made, or any other person having a right or interest in the seized property, if known, and file a copy of the inventory with the department.

(3) If a person other than the person from whom the property was seized as described in subsection (2) does not notify the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.

(4) If a person notifies the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee, with the assistance of the department of justice, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than $500, a person seeking the return of the property may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized.

History: En. Secs. 20, 21, Ch. 140, L. 1969; amd. Secs. 216, 217, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.21(part), 84-5606.22; amd. Sec. 254, Ch. 800, L. 1991; amd. Sec. 10, Ch. 352, L. 1993; amd. Sec. 22, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 352 near middle of (2), after "made", inserted "or any other person having a right or interest in the seized property" and deleted second sentence that read: "The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in 46-5-305, 46-5-311, and 46-5-312"; inserted (3) allowing forfeiture of seized property within 15 days absent written notice; inserted (4) providing for a hearing upon a written claim of ownership; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 414 in (1), near end after "department", inserted "of justice"; and made minor changes in style. Amendment effective July 1, 1993.

A style change in (2) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Coordination: Section 13(2), Ch. 352, L. 1993, provided: "If House Bill No. 609 and [this act] are both passed and approved, then the bracketed references to the department of justice in [sections 9 and 10 of this act] [amending 16-11-131 and 16-11-147] are effective. If House Bill No. 609 is not passed and approved, then the bracketed references to the department of justice in [sections 9 and 10] are void." House Bill No. 609 was approved as Ch. 414, L. 1993; therefore, the reference to the Department of Justice in (4) is effective.

Applicability: Section 15, Ch. 352, L. 1993, provided that the 1993 amendments to this section apply to cigarette sales made by a wholesaler after September 30, 1993.

Cross-References

Procedure regarding seized property, Title 46, ch. 5, part 3.

16-11-148. Violation a misdemeanor unless otherwise provided — penalties. Unless hereinbefore expressly otherwise provided, the violation of any provision of this part shall constitute a misdemeanor and any person violating any such provision shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment and, if such person is the holder of a license issued under this part, such license shall be revoked by the department for a period of 1 year.

History: En. Sec. 30, Ch. 140, L. 1969; amd. Sec. 223, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.31.

Cross-References

Place of imprisonment when none is specified — sentence for 1 year or less, 46-18-211.

16-11-149. Hearings before state tax appeal board. Any person aggrieved by any action of the department or its authorized agents under the provisions of this part may apply to the state tax appeal board, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents. The board shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the board may make any further or other order in the premises as it may consider proper and lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated.

History: En. Sec. 23, Ch. 140, L. 1969; amd. Sec. 111, Ch. 405, L. 1973; amd. Sec. 7, Ch. 155, L. 1977; R.C.M. 1947, 84-5606.24; amd. Sec. 23, Ch. 414, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 414 made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Contested cases — hearing under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

State Tax Appeal Board, Title 15, ch. 2.

16-11-150. Appeal to district court. Any person aggrieved by any action or decision of the state tax appeal board or a licensing decision of the department made under the provisions of this part may appeal therefrom to the district court in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 140, L. 1969; amd. Sec. 218, Ch. 516, L. 1973; amd. Sec. 8, Ch. 155, L. 1977; R.C.M. 1947, 84-5606.25.

Cross-References

Judicial review under Montana Administrative Procedure Act, 2-4-701 through 2-4-711.

16-11-151 through 16-11-154 reserved.

16-11-155. Definitions. As used in 16-11-111 and 16-11-155 through 16-11-158, the following definitions apply:

(1) "Indian reservation" means lands declared to be a reservation for an Indian tribe or tribes:

(a) by a treaty between the tribe and a territorial government, a state government, or the United States;

(b) through an act of the United States congress; or

(c) through an executive order of the United States.

(2) "Quota" means 150% of the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made or any other formula or amount agreed to in a state-tribal cooperative agreement.

History: En. Sec. 1, Ch. 352, L. 1993.

Compiler's Comments

Effective Date: Section 14(2), Ch. 352, L. 1993, provided that this section is effective July 1, 1993.

Applicability: Section 15, Ch. 352, L. 1993, provided that this section applies to cigarette sales made by a wholesaler after September 30, 1993.

16-11-156. Stamps affixed on cigarettes — exception. Except for cigarettes sold on a military reservation, cigarettes sold in Montana must have a Montana cigarette tax stamp affixed prior to sale.

History: En. Sec. 2, Ch. 352, L. 1993.

Compiler's Comments

Effective Date: Section 14(2), Ch. 352, L. 1993, provided that this section is effective July 1, 1993.

Applicability: Section 15, Ch. 352, L. 1993, provided that this section applies to cigarette sales made by a wholesaler after September 30, 1993.

16-11-157. Possession or unauthorized transportation of unstamped cigarettes — civil penalty. (1) In lieu of the criminal penalties provided in 16-11-131, 16-11-146, and 16-11-148, the department may assess a person who unlawfully possesses or transports unstamped cigarettes a civil penalty of $250 for the first full or partial pack of unstamped cigarettes and $10 for each additional full or partial pack of unstamped cigarettes.

(2) The department shall determine the amount of the penalty provided in subsection (1) and notify the person who unlawfully possessed or transported the unstamped cigarettes of the amount. The penalty is due and payable on the date of the notice. A penalty not paid when due is subject to interest at the rate of 10% a year.

History: En. Sec. 6, Ch. 352, L. 1993.

Compiler's Comments

Effective Date: Section 14(2), Ch. 352, L. 1993, provided that this section is effective July 1, 1993.

Applicability: Section 15, Ch. 352, L. 1993, provided that this section applies to cigarette sales made by a wholesaler after September 30, 1993.

16-11-158. Sale or retention of forfeited property — use of sale proceeds. (1) When property is forfeited under 16-11-147, the department may:

(a) retain the property or any part of the property for official use or, upon application by a law enforcement agency of this state, another state, the District of Columbia, or the United States, for the exclusive use of enforcing the provisions of 16-11-111, 16-11-131, 16-11-147, and 16-11-155 through 16-11-158 or the laws of another state, the District of Columbia, or the United States; or

(b) after advertising, sell the property at public auction to the highest bidder. The department, before delivering a seized item, shall first require stamps to be affixed.

(2) The proceeds of a sale under this section must be applied first to paying the expenses of any investigation leading to the seizure of the items, including costs incurred by a local, state, tribal, or federal law enforcement agency, and of the forfeiture and sale proceedings, including the expenses of seizure, maintenance, custody, and court costs. The balance of the proceeds, less an amount that is based on the value of the property seized on an Indian

reservation and that is allocated to a tribe pursuant to a state-tribal cooperative agreement, must be deposited in the state general fund.

History: En. Sec. 7, Ch. 352, L. 1993.

Compiler's Comments

Effective Date: Section 14(2), Ch. 352, L. 1993, provided that this section is effective July 1, 1993.

Applicability: Section 15, Ch. 352, L. 1993, provided that this section applies to cigarette sales made by a wholesaler after September 30, 1993.

Part 2

Tax on Tobacco Products Other Than Cigarettes

16-11-201. Definitions. As used in this part, the following definitions shall apply, unless the context requires otherwise:

(1) The word "retailer" shall mean any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

(2) The words "sale" or "sell" shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner or by any means whatever, of tobacco products other than cigarettes.

(3) The words "wholesale price" shall mean the established price for which a manufacturer sells a tobacco product other than cigarettes to a wholesaler or unclassified acquirer before any discount or other reduction.

(4) The word "wholesaler" shall mean any person who purchases tobacco products other than cigarettes directly from the manufacturer or who purchases tobacco products other than cigarettes from any other person who purchases from the manufacturer and who acquires such products for the purpose of bona fide sales to retail dealers or who services retail outlets by the maintenance of an established place of business for the purchase of tobacco products other than cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and distribution of tobacco products.

History: En. Sec. 1, Ch. 12, Ex. L. 1969; amd. Sec. 252, Ch. 516, L. 1973; R.C.M. 1947, 84-6801(4) thru (6).

16-11-202. Tax on sale of tobacco other than cigarettes — imposed on retail consumer — rate of tax. (1) All taxes paid pursuant to the provisions of this section shall be exclusively presumed to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of tobacco products other than cigarettes and recovered from the ultimate consumer or user. Any person selling tobacco products other than cigarettes at retail shall state or separately display in the premises where such products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax as hereinafter provided.

(2) There is hereby levied, imposed, and assessed upon tobacco products other than cigarettes sold or possessed in this state and there shall be collected and paid to the state of Montana a tax of 12 ½% of the wholesale price of such products to the wholesaler, excepting therefrom such products as may be

shipped from Montana and destined for retail sale and consumption outside the state of Montana.

History: En. Sec. 2, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6802; amd. Sec. 27, Ch. 15, Sp. L. July 1992.

Cross-References

Percentage of tax pledged — tobacco products other than cigarettes, 17-5-408.

16-11-203. Wholesaler to precollect tax. The tax imposed shall be precollected and paid by the wholesaler to the department prior to the sale of tobacco products other than cigarettes to the purchaser from the wholesaler.

History: En. Sec. 3, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6803.

16-11-204. Wholesaler's sale without tax prepayment a misdemeanor — penalty. Any wholesaler who shall sell any tobacco products other than cigarettes without first making payment of the tax provided for by this part in the manner and at the time specified shall be guilty of a misdemeanor and further shall be enjoined by an action pursued in the district court of the county of Lewis and Clark, Montana, from making further sale of tobacco products other than cigarettes for a period not less than 1 month or more than 1 year.

History: En. Sec. 4, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6804.

Cross-References

Injunctions, Title 27, ch. 19.

Penalty for misdemeanor statute not setting a penalty, 46-18-212.

16-11-205. Unlawful sales — penalty. It shall be unlawful for any person, individual, firm, or corporation to sell or offer to sell any tobacco products subject to this tax without the tax having been prepaid as provided for in this part. Violation of this section shall constitute a misdemeanor punishable by a fine of not more than $500 or imprisonment for not more than 6 months.

History: En. Sec. 5, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6805.

Cross-References

Place of imprisonment when none specified — sentence for 1 year or less, 46-18-211.

16-11-206. Wholesaler's discount — disposition of taxes. The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a 5% defrayment for the wholesaler's collection and administrative expense and must, in accordance with the provisions of 15-1-501(6), be deposited by the department in the long-range building program debt service fund. Refunds of the tax paid must be made as provided in 15-1-503 in cases where the tobacco products purchased become unsalable.

History: En. Sec. 6, Ch. 12, Ex. L. 1969; amd. Sec. 253, Ch. 516, L. 1973; R.C.M. 1947, 84-6806; amd. Sec. 8, Ch. 281, L. 1983; amd. Sec. 30, Ch. 455, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 455 near middle inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Part 3

Youth Access to Tobacco Products Control Act

16-11-301. Short title. This part may be cited as the "Youth Access to Tobacco Products Control Act".

History: En. Sec. 1, Ch. 569, L. 1993.

16-11-302. Definitions. For the purposes of 16-11-301 through 16-11-308, the following definitions apply:

(1) "Distribute" means:

(a) to give, deliver, sample, or sell;

(b) to offer to give, deliver, sample, or sell; or

(c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or sell.

(2) "Health warning" means a tobacco product label required by federal law and intended to alert users of the product to the health risks associated with tobacco use. The term includes warning labels required under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act of 1986.

(3) "License" means a retail tobacco product sales license.

(4) "Person" means a natural person, company, corporation, firm, partnership, organization, or other legal entity.

(5) "Tobacco product" means a substance intended for human consumption that contains tobacco. The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

History: En. Sec. 2, Ch. 569, L. 1993.

16-11-303. License for retail sale of tobacco products. (1) A person may not sell tobacco products at retail, whether over the counter, by vending machine, or otherwise, without a license obtained from the department of revenue.

(2) A license for the retail sale of tobacco products may be obtained from the department of revenue.

(3) The fee collected by the department must be deposited in the general fund.

History: En. Sec. 3, Ch. 569, L. 1993.

16-11-304. Signs. A retail seller of tobacco products shall conspicuously display, at each place on the premises at which tobacco products are sold, a sign that is to be provided without charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products to persons under 18 years of age."

History: En. Sec. 4, Ch. 569, L. 1993.

16-11-305. Sale or distribution of tobacco products to persons under 18 years of age prohibited. (1) A person may not sell or distribute a tobacco product to an individual under 18 years of age, whether over the counter, by vending machine, or otherwise.

(2) If there is a reasonable doubt as to the individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture of the individual.

History: En. Sec. 5, Ch. 569, L. 1993.

16-11-306. Sales from tobacco vending machines. Tobacco products may be sold through a vending machine only in:

(1) factories, businesses, offices, and other places not open to the general public;

(2) places to which individuals under 18 years of age are not permitted access;

(3) places where alcoholic beverages are sold and consumed on the premises; and

(4) places where the vending machine is under the direct supervision of the owner or an employee of the establishment. The sale of tobacco products from a vending machine under direct supervision of the owner or an employee of the establishment is considered a sale of tobacco products by that person for purposes of 16-11-305.

History: En. Sec. 6, Ch. 569, L. 1993.

16-11-307. Distribution of tobacco products in other than sealed packages prohibited. A person may not distribute a tobacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law.

History: En. Sec. 7, Ch. 569, L. 1993.

16-11-308. Penalties. (1) Failure to obtain a license as required by 16-11-303 or to post signs as provided in 16-11-304 is punishable by a civil penalty of $100.

(2) A person who violates 16-11-305(1) may be punished by a civil penalty of $100. A subsequent violation within 1 year is punishable by a civil penalty of $200. A third violation is punishable by a civil penalty of $300 if two violations occurred within the 2-year period prior to that violation. A fourth violation is punishable by a civil penalty of $500 if three or more violations occurred within the 2-year period prior to that violation.

(3) A person who violates 16-11-307 is guilty of a misdemeanor and upon conviction is liable for a civil penalty of not more than $100 for the first violation. A subsequent violation is punishable by a civil penalty of not more than $200. A third or subsequent violation is punishable by a civil penalty of not more than $500.

(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his employee or agent if the sale was without the knowledge of the license holder and the license holder shows that the license holder had in place a system to prevent violations of 16-11-305(1).

(5) The county attorney of the county in which a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of the penalty.

History: En. Sec. 8, Ch. 569, L. 1993.

16-11-309 and 16-11-310 reserved.

16-11-311. Local regulations. A local government may by ordinance adopt regulations on the subjects of 16-11-301 through 16-11-308 that are no more stringent than 16-11-301 through 16-11-308.

History: En. Sec. 10, Ch. 569, L. 1993.

16-11-312. Rulemaking authority. The department of revenue may adopt rules to implement 16-11-301 through 16-11-308.

History: En. Sec. 11, Ch. 569, L. 1993.

TITLE 17

STATE FINANCE

Ch.
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2. Accounting.
3. Federal Revenues and Endowments.
4. Debt Collection.
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CHAPTER 1

GENERAL ADMINISTRATION

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Part 1

General Administration and Fiscal Officers

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Budget Director — approval of budget amendments, 5-12-401.

State Auditor — warrant to Fire Department Relief Association, 19-19-305.

State Auditor to withhold salaries until books returned, 22-1-506.

State Auditor — audits of claims in bank liquidation, 32-1-537.

Ex officio treasurer of Unemployment Compensation Account, 39-51-402.

Treasurer for hail insurance, 80-2-232.

17-1-101. Definition of department. Except in chapter 3, part 3, and chapter 4, part 1, and unless the context requires otherwise, in this title "department" means the department of administration provided for in Title 2, chapter 15, part 10.

History: En. 82-108.1 by Sec. 44, Ch. 326, L. 1974; R.C.M. 1947, 82-108.1.

17-1-102. Uniform accounting system and expenditure control. (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees eliminated, public service improved, and the cost of government reduced.

(2) The department shall prescribe and install uniform accounting and reporting for all state agencies and institutions, showing the receipt, use, and disposition of all public money and property in accordance with generally accepted accounting principles, and shall develop plans for improvements and economies in the organization and operation thereof, which shall be submitted to the respective heads of agencies and institutions. Copies of all such plans shall be delivered to the governor, and additional copies shall be retained in the office of the department for inspection by the members of the legislature.

(3) The uniform accounting and reporting system must contain three levels of expenditure. The first level must include general categories, such as personal services, operating expenses, equipment, capital outlay, local assistance, grants, benefits and claims, transfers, and debt service. The second level of expenditure must include specific categories of expenditures within each first-level category. The third level of expenditure must include specific items of expenditure within each category of the second level.

(4) The department shall examine all financial affairs of every state agency and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof and for the purpose of enabling the department to properly perform any of the duties imposed upon the department by this part.

(5) All state agencies, including units of the university system, excluding community colleges, and the vocational-technical centers, shall input all necessary transactions to the accounting system prescribed in subsection (2)

before the accounts are closed at the end of the fiscal year in order to present the receipt, use, and disposition of all money and property for which the agency is accountable in accordance with generally accepted accounting principles, except that for budgetary control purposes, encumbrances which are required by generally accepted accounting principles to be reported as a reservation of fund balance shall be recorded as expenditures and liabilities on the accounting records.

History: (1)En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971; amd. Sec. 45, Ch. 326, L. 1974; 82-109, R.C.M. 1947; (2), (3)En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50, Ch. 326, L. 1974; Sec. 82-110, R.C.M. 1947; R.C.M. 1947, 82-109(1), 82-110(1), (2); amd. Sec. 1, Ch. 267, L. 1985; amd. Sec. 2, Ch. 787, L. 1991.

17-1-103. Assistance to legislature. (1) The department shall make all reports and submit all information and data the legislature requests and, when requested, attend all meetings of the appropriations committee of the house of representatives and of the finance and claims committee of the senate.

(2) The department shall, during the consideration of appropriation measures by the house and senate, devote so much of its time as may be required by the above-named committees, under the direction of the respective chairmen of the committees.

History: En. Sec. 11, Ch. 194, L. 1951; amd. Sec. 35, Ch. 93, L. 1969; amd. Sec. 51, Ch. 326, L. 1974; R.C.M. 1947, 82-111.

Cross-References

Legislative Finance Act, Title 5, ch. 12.

17-1-104 through 17-1-110 reserved.

17-1-111. General fiscal duties of state treasurer. (1) The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law.

(2) It is the duty of the state treasurer to:

(a) receive and account for all moneys belonging to the state, not expressly required by law to be received and kept by some other person;

(b) pay warrants out of the funds upon which they are drawn;

(c) upon payment of any warrant, take upon the back thereof the receipt of the person to whom it is paid;

(d) keep an account of all moneys received and disbursed;

(e) at the request of either house of the legislature or of any committee thereof, give information in writing as to the condition of the treasury or upon any subject relating to the duties of his office;

(f) discharge such other duties as may be imposed upon him by law.

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R.C.M. 1921; Cal. Pol. C. Sec. 452; re-en. Sec. 174, R.C.M. 1935; amd. Sec. 8, Ch. 147, L. 1963; amd. Sec. 1, Ch. 152, L. 1971; amd. Sec. 1, Ch. 269, L. 1973; R.C.M. 1947, 79-201(1) thru (7); amd. Sec. 1, Ch. 70, L. 1979.

Cross-References

Strict accountability, Art. VIII, sec. 12, Mont. Const.

Prohibited payments, Art. VIII, sec. 14, Mont. Const.

Disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Maintenance of fund and account records and interfund loans, 17-2-105.

State money — deposit, 17-6-101.

State money — how expended by Treasurer, 17-8-301.

Payment, registry, and interest, 17-8-304.

17-1-112. Access to offices. The state treasurer shall have full access to all offices of the state for inspection of such books, papers, and accounts thereof as concern his duties.

History: En. Sec. 447, Pol. C. 1895; re-en. Sec. 187, Rev. C. 1907; re-en. Sec. 186, R.C.M. 1921; re-en. Sec. 186, R.C.M. 1935; R.C.M. 1947, 79-805.

Cross-References

Public records management, Title 2, ch. 6, part 2.

17-1-113. Securities lending program. The state treasurer may, subject to the approval of the state board of investments, establish a securities lending program for all securities held in custody under 17-1-111. All loaned securities must be secured by equivalent securities of the same class in an amount equal to at least 100% of the market value of the loaned securities as determined by the board. All fees and proceeds earned by the securities lending program must be deposited pro rata in the funds that loaned the securities.

History: En. Sec. 1, Ch. 272, L. 1981.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Board of Investments — allocation — composition — quasi-judicial, 2-15-1808.

State money — deposit, 17-6-101.

17-1-114 through 17-1-120 reserved.

17-1-121. General fiscal duties of state auditor. It is the duty of the state auditor to:

(1) superintend the fiscal concerns of the state;

(2) give information in writing to either house of the legislature relating to the fiscal affairs of the state or the duties of his office when requested;

(3) suggest plans for the improvement and management of the public revenues;

(4) keep an account of all warrants drawn upon the treasurer and such other account and appropriation records that he determines to be essential for the support of the accounting records maintained in the office of the department of administration;

(5) keep an account between the state and the state treasurer and therein charge the state treasurer with the balance in the treasury when he came into office and with all moneys received by him and credit him with all warrants drawn on and paid by him;

(6) keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, and the date issued;

(7) require all persons who have received any moneys belonging to the state and have not accounted therefor to settle their accounts;

(8) draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury, but no warrant must be drawn unless authorized by law;

(9) authenticate with his official seal all warrants drawn by him and all copies of papers issued from his office;

(10) collect and pay into the state treasury all fees received by him;

(11) perform such other duties as are prescribed by law.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-101(1) thru (6), (9), (14), (15), (18), (19).

Cross-References

Insurance Department, 2-15-1902.

Commissioner of Insurance designated, 2-15-1903.

Payment, registry, and interest, 17-8-304.

17-1-122. Discretionary duties of state auditor. In his discretion it is the duty of the state auditor to:

(1) inspect the books of any persons charged with the receipt, safekeeping, or disbursement of public moneys;

(2) require all persons who have received moneys or securities or have had the disposition or management of any property of the state of which an account is kept in his office to render statements thereof to him, and all such persons must render statements at such times and in such form as he may require;

(3) promulgate rules regarding the distribution and processing of warrants issued;

(4) establish, under the joint control of the department of administration and the state auditor, a system of filing and storage of the original copy of claims paid by state warrant.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-101(10), (11), (16), (20).

Cross-References

Public records management, Title 2, ch. 6, part 2.

Audits of political subdivisions, Title 2, ch. 7, part 5.

17-1-123. Access to offices. The state auditor shall have access to all offices of the state for the inspection of such books, papers, and accounts thereof as may concern his duties.

History: En. Sec. 426, Pol. C. 1895; re-en. Sec. 176, Rev. C. 1907; re-en. Sec. 156, R.C.M. 1921; re-en. Sec. 156, R.C.M. 1935; R.C.M. 1947, 79-106.

Cross-References

Public records management, Title 2, ch. 6, part 2.

Discretionary duties of State Auditor, 17-1-122.

17-1-124 through 17-1-130 reserved.

17-1-131. General duties of budget director. (1) The budget director in addition to the duties set forth in chapter 7 of this title shall perform such other duties as the governor as chief budget officer of the state may direct.

(2) He shall, as often as requested by the governor, prepare and furnish reports to the governor concerning appropriations made by the legislature and the receipts and disbursements made by any department, office, or institution of the state.

(3) The budget director shall be available to all standing committees of the house of representatives and the senate concerned with appropriations, revenue, finance, and claims and shall furnish to such committees any information required while said committees are considering the budget.

History: En. Sec. 6, Ch. 158, L. 1959; amd. Sec. 6, Ch. 282, L. 1974; R.C.M. 1947, 79-1017.

Cross-References

Balanced budget, Art. VIII, sec. 9, Mont. Const.

Powers and duties of governor, 2-15-201.

Legislative Finance Act, Title 5, ch. 12.

Governor chief budget officer — appointment of Budget Director, 17-7-103.

17-1-132. Access to information. The budget director shall have power to demand and receive from every department, officer, board, commission, or institution, at any time, any and all information requested.

History: En. Sec. 7, Ch. 158, L. 1959; amd. Sec. 7, Ch. 282, L. 1974; R.C.M. 1947, 79-1018.

Cross-References

Public records management, Title 2, ch. 6, part 2.

Part 2

Anticipation of Revenue

Part Cross-References

Board of Investments — bond anticipation notes, 17-5-1507, 17-5-1606.

17-1-201. Issuance of notes in anticipation of revenue. (1) The board of examiners, upon recommendation of the department of administration, may issue notes in anticipation of the receipt of taxes or revenues, direct or indirect, as the legal demands on the treasury during any fiscal year render it necessary.

(2) The notes issued in any fiscal year shall be for the purposes and within the amounts of appropriations made for the fiscal year and must be designated tax or revenue anticipation notes. Appropriations during any biennium are limited to projected revenue, exclusive of notes issued in anticipation of revenue.

History: En. Sec. 1, Ch. 658, L. 1979.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Use of loan proceeds, Art. VIII, sec. 11, Mont. Const.

Prohibited payments, Art. VIII, sec. 14, Mont. Const.

Board of Examiners — allocations, 2-15-1007.

17-1-202. Repealed. Sec. 1, Ch. 2, Sp. L. June 1986.

History: En. Sec. 2, Ch. 658, L. 1979; amd. Sec. 1, Ch. 577, L. 1981.

17-1-203. Interest rate. The notes shall bear interest at such rate as, in the judgment of the board of examiners, may be sufficient or necessary to effect the issuance and sale of the notes in the manner determined by the board of examiners upon recommendation of the department of administration.

History: En. Sec. 3, Ch. 658, L. 1979.

Cross-References

Legal interest, 31-1-106.

17-1-204. Payment — pledge of taxes and revenue — costs of issuance. (1) The notes and interest on the notes must be paid from taxes and revenues not later than the end of the fiscal year in which issued.

(2) The full faith and credit and taxing power of the state shall be pledged for the payment of all notes issued under this part.

(3) The department may pay all costs of issuance of notes issued under this part, including without limitation interest, rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the notes, line of credit fees and charges, and all other amounts related to the costs of issuing the notes. Payment of costs must be made from amounts available therefor from the proceeds of the notes upon deposit in the general fund.

History: En. Sec. 4, Ch. 658, L. 1979; amd. Sec. 2, Ch. 577, L. 1981; amd. Sec. 1, Ch. 49, L. 1985.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Parts 3 and 4 reserved

Part 5

Dedication of Revenue

Part Compiler's Comments

Effective Date: Section 10(1), Ch. 593, L. 1993, provided: "[Sections 1 through 6 [17-1-501 through 17-1-506] and this section] are effective on passage and approval." Approved April 29, 1993.

17-1-501. Legislative findings. (1) The legislature finds that provisions for dedicating state revenue have increased in number, reduce legislative control over state spending, complicate the state funding structure, and increase the effort required to budget, appropriate, and monitor public funds. The dedication of funds results in the inability of the legislature to practically and systematically conduct reasoned prioritization of programs or funds.

(2) It is the intent of the legislature, by establishing a system for the review and evaluation of revenue dedication provisions, to ensure that provisions for revenue dedication:

(a) are based on sound principles of revenue dedication;

(b) reflect present circumstances and legislative priorities for state spending; and

(c) are terminated when they no longer are necessary or appropriate.

History: En. Sec. 1, Ch. 593, L. 1993.

17-1-502. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Dedicated revenue provision" means an administrative or legislative action that allocates the revenue from a tax, fee, assessment, or other source to an account in the state special revenue fund.

(2) "State special revenue fund" means a fund in the state treasury consisting of money from state sources that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government, as provided in 17-2-102.

History: En. Sec. 2, Ch. 593, L. 1993.

17-1-503. Transfer of fund balances to general fund. On April 29, 1993, the balance remaining in each special revenue account terminated pursuant to legislative review must be deposited in the general fund.

History: En. Sec. 3, Ch. 593, L. 1993.

17-1-504. Effect of termination. (1) If the legislature has appropriated the revenue from an account provided for in 15-1-501, 20-9-343, and 31-1-602, the appropriation is considered to have been made from the general fund.

(2) All assets, liabilities, and fund balances of accounts terminated by 15-1-501, 20-9-343, and 31-1-602 accrue to the general fund.

History: En. Sec. 4, Ch. 593, L. 1993.

17-1-505. Legislative review and report. (1) Each interim, the legislative finance committee shall review each dedicated revenue provision not exempted under subsection (3) and review statutory appropriations assigned by the legislature.

(2) The review conducted by the committee must include an evaluation of the dedicated revenue provision, based on whether it:

(a) provides direct benefits for those who pay the dedicated tax, fee, or assessment;

(b) provides special information or other advantages that could not be obtained if the revenue were allocated to the general fund;

(c) provides program funding at a level equivalent to the expenditures established by the legislature;

(d) involves collection and allocation formulas that are appropriate to the present circumstances in state government;

(e) impairs the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending;

(f) results in an inappropriate ending fund balance;

(g) fulfills a continuing, legislatively recognized need; and

(h) results in accounting or auditing inefficiency.

(3) The committee shall establish procedures to facilitate the review and evaluation required by this section. Each interim, the committee shall attempt to propose measures that will reduce dedicated revenue to an amount that is less than one-third of all state revenue. If the review determines that the revenue dedication is constitutionally mandated, is for debt service, funds emergency services, or is a user fee that is designed to provide direct benefits for those who pay the dedicated tax, fee, or assessment in an amount commensurate with the benefits provided, the revenue dedication does not need a future review.

(4) Upon completion of the review, the committee shall report a summary of its findings to the legislature, including its recommendation of termination or extension, with or without modification, of the dedicated revenue provision. The summary must include the purpose of the revenue dedication, the source of funding, the activity funded, the number of personnel associated with the activity, and any balance in the dedicated revenue fund. The summary must state the reason why the revenue dedication is exempt from future review.

(5) The committee shall review statutory appropriations to determine if the appropriation should be made by a legislative appropriation. During the 1995 biennium, the committee shall review the statutory appropriation of administrative costs in 75-11-313.

History: En. Sec. 5, Ch. 593, L. 1993.

17-1-506. Review of legislation. The office of budget and program planning shall, consistent with the review provisions in 17-1-505, review each piece of legislation that proposes to dedicate revenue. The office shall submit its findings concerning the dedication of revenue on the fiscal notes accompanying that legislation.

History: En. Sec. 6, Ch. 593, L. 1993.

CHAPTER 2

ACCOUNTING

Part 1 — Treasury Funds and Accounts

17-2-101. Title and purpose.
17-2-102. Fund structure.
17-2-103. Previous definitions of funds — identification or segregation of moneys and funds.
17-2-104. Additional accounts authorized.
17-2-105. Maintenance of fund and account records and interfund loans.
17-2-106. Creation and abolition of new accounts.
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17-2-108. Expenditure of nongeneral fund money first.
17-2-109. Department access to records.
17-2-110. Fiscal year and financial reports.
17-2-111. Review of state special revenue accounts and proprietary accounts — report — transfer of funds.
17-2-112 through 17-2-120 reserved.
17-2-121. Deposits by insurance commissioner.
17-2-122. Repealed.
17-2-123. Repealed.
17-2-124 through 17-2-130 reserved.
17-2-131. Genetic engineering technology research and development account created.

Part 2 — Special Accounts

17-2-201. Contingent revolving accounts — when established.
17-2-202. Retention of agency moneys.
17-2-203. Repealed.

Chapter Cross-References

Contribution account in agency fund, 19-1-601 through 19-1-604.

Fund for telecommunications services for the handicapped, 53-19-310.

Funds created for water conservation, 85-1-321.

Part 1
Treasury Funds and Accounts

Part Cross-References

Treasurer to withhold payment, 2-2-206.

Disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Disposition of license and other tax proceeds within treasury funds, 15-1-501.

Warrants to Fire Department Relief Association, 19-18-514.

Ex officio treasurer of Unemployment Compensation Account, 39-51-402.

Treasurer for hail insurance, 80-2-232.

17-2-101. Title and purpose. Sections 17-2-101 through 17-2-107 may be cited as the "Treasury Fund Structure Act". The purpose of these sections is to simplify the accounting system and treasury fund structure of the state, to make possible the full utilization of modern accounting methods, to provide the legislature with a greater measure of control over public moneys, and to enable the financial records of the state to accurately reflect the state's revenues, expenditures, expenses, and financial position in accordance with generally accepted accounting principles.

History: En. Sec. 1, Ch. 147, L. 1963; R.C.M. 1947, 79-409; amd. Sec. 1, Ch. 540, L. 1979; amd. Sec. 1, Ch. 28, L. 1981.

17-2-102. Fund structure. (1) There are in the state treasury only the following fund categories and types:

(a) the governmental fund category, which includes:

(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(iii) the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) the proprietary fund category, which includes:

(i) the enterprise fund type, which accounts for operations:

(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(ii) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

(i) expendable trust fund type;

(ii) nonexpendable trust fund type;

(iii) pension trust fund type; and

(iv) agency fund type.

(d) the higher education funds, which include:

(i) the current fund, which accounts for money deposited in the state treasury that is used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system and vocational-technical centers. The financial activities of the current fund are subdivided, for operational purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(B) The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(C) The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments wherein the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(D) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the student loan fund, which accounts for money deposited in the state treasury that may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system and vocational-technical centers;

(iii) the endowment fund, which accounts for money deposited in the state treasury by the Montana university system and vocational-technical centers wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(iv) the annuity and life income fund, which accounts for money deposited in the state treasury by the Montana university system and vocational-technical centers under an agreement whereby the money is made available on condition that the receiving unit of the Montana university system or vocational-technical center binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(v) the plant fund, which accounts for those financial resources allocated to or received by the Montana university system and vocational-technical centers for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(vi) the agency fund, which accounts for money deposited in the state treasury wherein the Montana university system or a vocational-technical center acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1), there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v); and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v).

History: En. Sec. 2, Ch. 147, L. 1963; amd. Sec. 1, Ch. 321, L. 1973; amd. Sec. 1, Ch. 438, L. 1977; R.C.M. 1947, 79-410; amd. Sec. 2, Ch. 540, L. 1979; amd. Sec. 2, Ch. 28, L. 1981; amd. Sec. 9, Ch. 281, L. 1983; amd. Sec. 1, Ch. 136, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 700, L. 1989; amd. Sec. 2, Ch. 433, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 433 at end of (1)(a)(ii)(A), after "government", inserted "and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation" and deleted former second sentence that read: "Other nonstate and nonfederal revenue deposited in the state special revenue account is not subject to the emergency budget amendment provisions of 17-7-403"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Insurance on state buildings — use of proceeds — building replacement, 2-17-105.

Disposition of tax proceeds, Title 15, ch. 1, part 5.

Revenue to be paid to state treasurer, 16-1-306.

Fiscal officer for receipt of federal grants, 17-3-106.

Bond issues, Title 17, ch. 5.

Statutory appropriations, Title 17, ch. 7, part 5.

Appropriation and disbursement of money from the treasury, 17-8-101.

Special law enforcement assistance account in federal special revenue fund, 44-13-101.

Environmental contingency account, 75-1-1101.

Oil and gas production damage mitigation account, 82-11-161.

Energy conservation program bonds — deposit of proceeds, 90-4-611, 90-4-612.

Use of energy conservation program account, 90-4-613.

Coal impacts — general provisions, Title 90, ch. 6, part 2.

17-2-103. Previous definitions of funds — identification or segregation of moneys and funds. (1) It is the intent of the legislature that the definitions in 17-2-102 supersede all previous definitions of public funds which are inconsistent with the definitions found in this part.

(2) Any laws enacted in the future or any contracts entered into in the future in pursuance of law that require the segregation of moneys in the state treasury by means of a separate treasury fund shall be interpreted as permitting the segregation of such moneys by means of a subfund or account within one of the funds created by 17-2-102.

(3) Each federal grant or other federal money within any subfund or account of one of the funds created by 17-2-102(1)(a) through (1)(c) must be identifiable as a separate accounting entity, reporting center, responsibility center, or revenue identification code, and an account must be made of each such grant or other money by income and expenditure for each federal grant year or fiscal year as may be applicable.

(4) Unless otherwise specifically provided in the statutes pertaining to the tax, the portion of taxes collected by the state that, pursuant to a statute, are to be wholly or partially allocated or distributed to units of local government, school districts, authorities, or other local governmental entities shall be accounted for in the state special revenue fund established in 17-2-102.

History: Ap.p. Sec. 3, Ch. 147, L. 1963; amd. Sec. 2, Ch. 438, L. 1977; Sec. 79-411, R.C.M. 1947; Ap.p. Sec. 2, Ch. 438, L. 1977; R.C.M. 1947, 79-411; amd. Sec. 3, Ch. 28, L. 1981; amd. Sec. 1, Ch. 515, L. 1985.

Cross-References

Deposit and use of proceeds, 17-5-506.

17-2-104. Additional accounts authorized. The enumeration of treasury funds in 17-2-102 does not prohibit the state treasurer from establishing and maintaining:

(1) clearance or suspense accounts for the purpose of paying refunds, for the purpose of grouping payments from different funds or accounts prior to disbursement, or for the purpose of conveniently processing receipts before crediting the proper fund;

(2) investment funds authorized under the "Unified Investment Plan".

History: En. Sec. 4, Ch. 147, L. 1963; R.C.M. 1947, 79-412.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Investments, Title 17, ch. 6, part 2.

17-2-105. Maintenance of fund and account records and interfund loans. (1) The state treasurer shall record receipts and disbursements for treasury funds and shall maintain fund records in such a manner as to reflect the total cash and invested balance of each fund. The state treasurer shall also maintain records of individual funds within the debt service, agency, capital projects, and trust fund types in such a manner as to reflect the total cash and invested balance of each fund. When necessary to meet federal or other requirements that moneys be segregated in the treasury, the state treasurer may establish accounts, funds, or subfunds within any fund type listed in 17-2-102.

(2) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, providing that the loan is recorded in the state accounting records. Such loan shall bear no interest, and no fund shall be so impaired that all proper demands thereon cannot be met.

History: **(1)En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-414, R.C.M. 1947; (2)En. Sec. 7, Ch. 147, L. 1963; amd. Sec. 2, Ch. 268, L. 1971; amd. Sec. 2, Ch. 321, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-415, R.C.M. 1947; R.C.M. 1947, 79-414(1), 79-415(4); amd. Sec. 10, Ch. 281, L. 1983.**

17-2-106. Creation and abolition of new accounts. (1) Moneys deposited in each fund except the general fund shall be segregated by the department of administration by specific accounts based on source, function, or department. When moneys deposited in the state treasury cannot logically be credited to an existing account or when it is impractical or undesirable for an agency of state government to segregate moneys in its own accounts, the department of administration, in its discretion, may create new accounts consistent with the definitions in 17-2-102. However, the department of administration shall create as few new accounts as practicable.

(2) The department of administration shall periodically examine all accounts and shall abolish or consolidate inactive or unnecessary accounts.

(3) When moneys have been appropriated from several sources for the operation of a state agency, the department of administration may establish an account to receive, hold, and disburse moneys appropriated for the operation of the agency and regulate the transfer of moneys to the account in accordance with the laws governing the expenditure of state moneys.

History: **(1), (2)En. Sec. 5, Ch. 147, L. 1963; amd. Sec. 27, Ch. 326, L. 1974; Sec. 79-413, R.C.M. 1947; (3)En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-414, R.C.M. 1947; R.C.M. 1947, 79-413, 79-414(4).**

17-2-107. Accurate accounting records and interentity loans. (1) The department of administration shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each accounting entity. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenues.

(2) (a) When the expenditure of an appropriation from a fund designated in 17-2-102(1)(a) through (1)(c) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department of administration may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(1)(d)(i)(A) through (1)(d)(vi) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4), of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(1)(d)(i)(A) through (1)(d)(vi) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances the director of the department of administration or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings, other than investment earnings on student activity fees used to support student governments at units of the university system, are credited to the state general fund.

(5) If for two consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department of administration or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.

(6) If for two consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(1)(d)(i) through (1)(d)(vi) has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.

(7) (a) An accounting entity in a fund designated in 17-2-102(1)(a) through (1)(c) may not have a negative cash balance at fiscal yearend. The department of administration may, however, allow an accounting entity to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii), a unit of the university system or vocational-technical center shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department of administration may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department of administration may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary due to the timing of the receipt of agreed upon reimbursements from federal, private, or other governmental entity sources for disbursements made. The department of administration may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under such terms and conditions as may be determined by the department of administration or by specific legislative authorization.

History: En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-414(2), (3); amd. Sec. 1, Ch. 626, L. 1979; amd. Sec. 4, Ch. 28, L. 1981; amd. Sec. 1, Ch. 517, L. 1983; amd. Sec. 2, Ch. 136, L. 1985; amd. Sec. 1, Ch. 354, L. 1985; amd. Sec. 1, Ch. 1, Sp. L. June 1986; amd. Sec. 1, Ch. 170, L. 1987; amd. Sec. 2, Ch. 341, L. 1987; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 151, L. 1989; amd. Sec. 1, Ch. 622, L. 1989; amd. Sec. 1, Ch. 628, L. 1991.

17-2-108. Expenditure of nongeneral fund money first. (1) Except for the exemption applicable to the Montana historical society in 22-3-114(5), an office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations.

(2) The approving authority, as defined in 17-7-102, shall authorize the decrease of the general fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation in an appropriation act unless the decrease is contrary to federal law, federal rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If directed by an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary to state law, state rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which the money is received is increased in the amount of the general fund decrease.

History: En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971; amd. Sec. 45, Ch. 326, L. 1974; R.C.M. 1947, 82-109(2); amd. Sec. 1, Ch. 352, L. 1989; amd. Sec. 3, Ch. 787, L. 1991; amd. Sec. 4, Ch. 4, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 4 at beginning of (1) inserted exception language regarding the Montana Historical Society. Amendment effective July 1, 1993.

Cross-References

Judgments against governmental entities except state, 2-9-316.

17-2-109. Department access to records. (1) All officers, employees, and other persons connected with the fiscal affairs of any state office, agency, or institution must afford all reasonable facilities for the examination of accounts and investigations provided for and must make reports, returns, and exhibits relating to such fiscal matters to the department in a form that the department shall prescribe.

(2) If an officer or employee of the state or any agency refuses or neglects to comply with subsection (1) of this section, the salary of that officer or employee shall, on request of the department to the proper official, be withheld until that officer or employee complies with subsection (1) and the department certifies approval to the disbursing officer.

History: En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50, Ch. 326, L. 1974; R.C.M. 1947, 82-110(part).

Cross-References

Department of Administration's powers and duties, 2-6-203.

17-2-110. Fiscal year and financial reports. (1) The fiscal year for state purposes commences on July 1 of each year and ends on June 30 of each year.

(2) At the close of each fiscal year the fiscal records of each state office, department, bureau, commission, institution, university unit, vocational-technical center, and agency (hereinafter collectively referred to as "state agency") shall be closed as of the end of the fiscal year. Each state agency shall prepare such financial statements and reconciliations for the fiscal year as the department of administration may prescribe. These financial reports are to be completed and distributed not more than 31 days following the close of each fiscal year. The department of administration may extend this time limit if a state agency can show necessity therefor.

(3) The reports are to be distributed to the department of administration and the legislative auditor and any other state agency the department of administration may prescribe. It is the intent of this provision that these reports accurately and comprehensively present the financial activities of the reporting state agency in accordance with generally accepted accounting principles so that the reports can be effectively utilized by the executive and legislative branches of state government.

(4) Upon consolidation of the reports, the annual financial report by the department of administration will be available for other individuals and organizations interested in the financial affairs of the state of Montana.

History: En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921; re-en. Sec. 518, R.C.M. 1921; re-en. Sec. 518, R.C.M., 1935; amd. Sec. 1, Ch. 121, L. 1953; amd. Sec. 1, Ch. 84, L. 1955; amd. Sec. 2, Ch. 127, L. 1961; amd. Sec. 1, Ch. 175, L. 1969; R.C.M. 1947, 59-701(part); amd. Sec. 2, Ch. 267, L. 1985.

Cross-References

Statutes — effective date, 1-2-201.

Powers and duties, 5-13-304.

Information from state agencies, 5-13-309.

17-2-111. Review of state special revenue accounts and proprietary accounts — report — transfer of funds. (1) Each biennium, the department of administration shall examine all state special revenue accounts and proprietary accounts as required by this section and report the findings and recommendations to the legislative finance committee not later than June 1 of the year preceding a regular session of the legislature.

(2) The department shall examine restrictions against the transfer of unobligated balances in state special revenue accounts to the general fund. If such restrictions are considered unnecessary by the department and if they may be eliminated by administrative action, the department shall to the fullest extent possible eliminate such restrictions and require the transfer of unobligated balances in the accounts to be made to the general fund, either on an annual or biennial basis. If administrative action is unavailable, the department shall make recommendations for legislative action.

(3) The department shall examine all state special revenue accounts and proprietary accounts to determine if they should continue to exist or be eliminated or modified to provide better program operation or fiscal control. In conducting the examination, the department shall consider whether an account:

(a) is accurately classified as a state special revenue account or proprietary account;

(b) is required by the Montana constitution or by statute;

(c) operates in compliance with the statutes that established the program;

(d) receives an amount of revenue that is equal to or close to the expenditure required for the activity funded by the account;

(e) allows the funded program to operate without supplemental general funds; and

(f) has any restrictions against the transfer of unobligated balances in the account to the general fund.

History: En. Sec. 1, Ch. 390, L. 1987; amd. Sec. 2, Ch. 700, L. 1989.

17-2-112 through 17-2-120 reserved.

17-2-121. Deposits by insurance commissioner. All fees, miscellaneous and examination charges, fines, penalties, and those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the insurance commissioner pursuant to Title 33 and the rules adopted thereunder must be deposited in the general fund.

History: En. Sec. 2, Ch. 391, L. 1985; amd. Sec. 2, Ch. 351, L. 1989.

Cross-References

Insurance Commissioner to deposit fines and penalties in insurance regulatory trust account, 33-2-708.

17-2-122. Repealed. Sec. 9, Ch. 351, L. 1989.

History: En. Sec. 3, Ch. 391, L. 1985.

17-2-123. Repealed. Sec. 9, Ch. 351, L. 1989.

History: En. Sec. 4, Ch. 391, L. 1985.

17-2-124 through 17-2-130 reserved.

17-2-131. Genetic engineering technology research and development account created. There is created in the current restricted subfund a restricted account for funds appropriated to Montana state university for applied genetic engineering technology research and development. Funds appropriated under section 2, Chapter 686, Laws of 1989, and money contributed by the Montana agriculture industry must be deposited in the account and are restricted to genetic engineering technology research and development only.

History: En. Sec. 1, Ch. 686, L. 1989.

Cross-References

Miscellaneous finance — University System, Title 20, ch. 25, part 4.

Part 2
Special Accounts

17-2-201. Contingent revolving accounts — when established. (1) The department of administration may authorize the establishment and maintenance at any and all of the state institutions or in any of the departments, boards, or commissions of Montana of contingent revolving accounts, transferring in trust to the business offices of said institutions such sums of money as may appear necessary, to be used by said institutions for the payment of demands requiring immediate cash payment, such as payment of minor invoices, invoices for which discount period is too short to take advantage of the discount if payment is made by warrant, freight and express charges, travel advances, postage, publications requiring remittance to accompany the order, and the establishment of cash change funds, all under specific regulations to be established by the department of administration.

(2) Each and every state institution granted a contingent revolving account shall report to the department of administration monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The department of administration may cancel such authorizations and recall such funds at pleasure.

History: En. Sec. 4, Ch. 112, L. 1921; re-en. Sec. 195, R.C.M. 1921; re-en. Sec. 195, R.C.M. 1935; amd. Sec. 9, Ch. 80, L. 1961; amd. Sec. 1, Ch. 148, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-602.

17-2-202. Retention of agency moneys. The department of administration may, in its discretion, permit any state agency to retain in its possession, under conditions the department of administration may prescribe, moneys that would otherwise be deposited in the agency fund as defined in 17-2-102. The department of administration may cancel this permission and require the deposit of the moneys with the state treasurer. However, the state treasurer, with the consent of the board of investments, shall designate depositories for the moneys and securities and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in the depositories.

History: En. Sec. 5, Ch. 112, L. 1921; re-en. Sec. 196, R.C.M. 1921; amd. Sec. 2, Ch. 157, L. 1931; re-en. Sec. 196, R.C.M. 1935; amd. Sec. 12, Ch. 147, L. 1963; amd. Sec. 3, Ch. 268, L. 1971; amd. Sec. 28, Ch. 326, L. 1974; amd. Sec. 7, Ch. 61, L. 1977; R.C.M. 1947, 79-603.

Cross-References

State Treasurer as treasurer of state agencies — deposits of money, 17-6-105.

17-2-203. Repealed. Sec. 7, Ch. 540, L. 1979.

History: En. Sec. 6, Ch. 112, L. 1921; re-en. Sec. 197, R.C.M. 1921; re-en. Sec. 197, R.C.M. 1935; R.C.M. 1947, 79-604.

CHAPTER 3

FEDERAL REVENUES AND ENDOWMENTS

Part 1 — Federal Assistance Management

17-3-101. Purpose.
17-3-102. Definitions.
17-3-103. Repealed.
17-3-104. Repealed.
17-3-105. Governor authorized to accept funds — designation of state agency.
17-3-106. Fiscal officer for receipt of federal grants.
17-3-107. Federal funds for welfare of Indians.
17-3-108. Approved budget amendment.
17-3-109. Reports by participating state agencies.
17-3-110. Statewide cost allocation plan.
17-3-111. Indirect cost rates.

Part 2 — Distribution of Federal Return on State Resources

17-3-201. Repealed.
17-3-202 through 17-3-210 reserved.
17-3-211. Forest reserve money.
17-3-212. Apportionment of forest reserve funds among counties.
17-3-213. Allocation to general road fund and countywide school levies.
17-3-214. Correction of errors in apportionment.
17-3-215 through 17-3-220 reserved.
17-3-221. State treasurer to be custodian of moneys received under Taylor Grazing Act.
17-3-222. Apportionment of moneys to counties.
17-3-223 through 17-3-230 reserved.
17-3-231. Flood Control Act — distribution of revenues to counties.
17-3-232. Deposit and expenditure of funds by counties.

Part 3 — Federal Sums in Lieu of Taxes

17-3-301. Definitions.
17-3-302. Requests for sums in lieu of taxes and agreements to perform services.
17-3-303. Basis for amount of payment.
17-3-304. Duplicate of agreement — filing — receipt for tax.
17-3-305. Disposal of moneys.

Parts 4 through 9 reserved

Part 10 — Endowments

17-3-1001. State institutions which may take by gift, bequest, or grant.
17-3-1002. Persons who may make gifts to state institutions.
17-3-1003. Support of state institutions.
17-3-1004. Disbursement of funds.

Chapter Cross-References

Receipt of federal revenues for:

Local public works programs, 7-13-142, 7-13-143.

School food service, 20-10-201.

State Library Commission, 22-1-103.

Law Enforcement Academy, 44-10-202.

Application for federal revenues for hospital construction, 50-5-404, 50-5-406.

Department of Health and Environmental Sciences, 50-17-103.

Department of Social and Rehabilitation Services, 53-20-203.
Department of Transportation, Board of Aeronautics, 67-1-301.
Aid to airports, 67-10-405.
Municipal and regional airport authorities, 67-11-305.
Flood control and water conservancy districts, 76-5-1110.
Open-space land, 76-6-109.
Department of Agriculture, 80-2-102.
Board of Land Commissioners, 82-4-424.

Part 1

Federal Assistance Management

17-3-101. Purpose. The purpose of this part is to provide more complete information regarding federal assistance programs to the governor, state agencies, and the legislature and coordinate federally assisted programs with other state programs.

History: En. 79-2702 by Sec. 2, Ch. 259, L. 1975; R.C.M. 1947, 79-2702.

17-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Application" means a written request to a federal agency for federal assistance program funds.

(2) "Federal assistance programs" means any financial assistance made to a state agency by an agency of the United States government, whether a grant, loan, gift, contract or in any other form.

(3) "Grantee agency" means any agency of state government receiving federal funds.

(4) "Indirect costs" means costs which benefit more than one agency or program and are not readily assignable to the agency or program specifically benefiting.

(5) "Service agency" means state agencies which provide goods, facilities, and services to a grantee agency.

(6) "State agency" means any agency of state government eligible to apply for and receive federal funds.

History: (1), (2), (5)En. 79-2703 by Sec. 3, Ch. 259, L. 1975; Sec. 79-2703, R.C.M. 1947; (3), (4), (6)En. 79-1020 by Sec. 1, Ch. 223, L. 1975; Sec. 79-1020, R.C.M. 1947; R.C.M. 1947, 79-1020, 79-2703.

17-3-103. Repealed. Sec. 1, Ch. 176, L. 1979.

History: En. 79-2704 by Sec. 4, Ch. 259, L. 1975; R.C.M. 1947, 79-2704.

17-3-104. Repealed. Sec. 2, Ch. 109, L. 1993.

History: En. 79-2706 by Sec. 6, Ch. 259, L. 1975; R.C.M. 1947, 79-2706.

17-3-105. Governor authorized to accept funds — designation of state agency. (1) The governor is authorized to accept on behalf of the state any federal assistance funds made available by act of congress for programs that are consistent with the needs and goals of the state and its citizens and that are not prohibited by the provisions of this part or other applicable law.

(2) The governor shall designate, unless otherwise specified by state or federal law or regulation, the state agency to administer the accepted federal assistance program.

History: En. 79-2705 by Sec. 5, Ch. 259, L. 1975; R.C.M. 1947, 79-2705.

Cross-References

Federal aid, 2-15-137.

17-3-106. Fiscal officer for receipt of federal grants. (1) The state treasurer is designated as the fiscal officer of the state to receive from the United States government or any of its agencies all funds that may be made available as a grant to the state of Montana under any act of congress, or otherwise, for any purpose or use. The state treasurer shall, upon receipt of the funds, deposit the funds in the proper fund in the state treasury.

(2) The state treasurer may return to the federal government any federal funds and the interest earned on the funds that may not be retained by the state according to federal law or the terms of the federal grant that made the funds available. The funds are statutorily appropriated, as provided in 17-7-502, to the state treasurer for the purpose of returning the funds under the provisions of this subsection.

History: En. Sec. 1, Ch. 119, L. 1949; R.C.M. 1947, 79-210; amd. Sec. 1, Ch. 107, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 107 inserted (2) allowing the State Treasurer to return to the federal government any federal funds plus interest that may not be retained by the state and statutorily appropriating those funds to the State Treasurer for the purpose of returning the funds; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Fund structure, 17-2-102.

17-3-107. Federal funds for welfare of Indians. If and whenever the congress of the United States shall authorize the administration of federal appropriations for the welfare of the Indians of Montana through the agency of public departments and bureaus of this state, full power and authority is conferred upon such state agencies to administer the expenditure of such federal appropriations for the welfare of such Indians within the scope of the powers conferred upon such departments by law.

History: En. Sec. 1, Ch. 65, L. 1927; re-en. Sec. 5668.14, R.C.M. 1935; R.C.M. 1947, 79-1601.

17-3-108. Approved budget amendment. Financing for new or expanded programs from federal assistance program sources may be made available only by approved budget amendment.

History: En. 79-2707 by Sec. 7, Ch. 259, L. 1975; amd. Sec. 9, Ch. 61, L. 1977; R.C.M. 1947, 79-2707; amd. Sec. 1, Ch. 109, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 109 deleted former first sentence that read: "Approval of a state agency application under 17-3-104 shall not constitute authority to expend any federal assistance program funds subsequently granted." Amendment effective March 18, 1993.

Cross-References

Budget amendments, Title 17, ch. 7, part 4.

17-3-109. Reports by participating state agencies. Any state agency that participates in any federal assistance program shall make such reports regarding it as the budget director may require.

History: En. 79-2708 by Sec. 8, Ch. 259, L. 1975; R.C.M. 1947, 79-2708.

Cross-References

Inquiries and investigations by budget director, 17-7-113.

17-3-110. Statewide cost allocation plan. The director of the department of administration shall annually prepare a statewide cost allocation plan distributing service agency indirect costs among the grantee agencies, in accordance with principles and procedures established by federal regulations and guidelines.

History: En. 79-1021 by Sec. 2, Ch. 223, L. 1975; R.C.M. 1947, 79-1021; amd. Sec. 1, Ch. 579, L. 1983.

17-3-111. Indirect cost rates. Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

History: En. 79-1022 by Sec. 3, Ch. 223, L. 1975; R.C.M. 1947, 79-1022.

Part 2

Distribution of Federal Return on State Resources

Part Cross-References

School food service, 20-10-201.

Aid to highways, 60-3-101.

Flood control and water conservancy districts, 76-5-1110.

17-3-201. Repealed. Sec. 6, Ch. 20, Sp. L. June 1986.

History: En. Sec. 1, Ch. 246, L. 1973; amd. Sec. 1, Ch. 357, L. 1977; R.C.M. 1947, 79-211; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 541, L. 1983.

17-3-202 through 17-3-210 reserved.

17-3-211. Forest reserve money. (1) The state treasurer, for the purpose of carrying out the provisions of 16 U.S.C. 500, and all acts subsequent thereto, shall divide and distribute all forest reserve moneys received by the state thereunder, plus interest earned, to and among the several counties entitled thereto and pay the same to the several county treasurers of such counties within 30 days after receiving full payment of the same, as directed by the state auditor.

(2) The forest reserve money shall be invested and all investment earnings credited to the forest reserve account.

History: En. Sec. 1, Ch. 26, L. 1915; re-en. Sec. 175, R.C.M. 1921; re-en. Sec. 175, R.C.M. 1935; R.C.M. 1947, 79-203; amd. Sec. 1, Ch. 712, L. 1985.

17-3-212. Apportionment of forest reserve funds among counties. The forest reserve funds and earned interest are statutorily appropriated, as provided in 17-7-502, to the state auditor, who shall apportion said forest reserve funds and earned interest for allocation between the several counties as follows: all funds received from each forest reserve shall be apportioned between the counties in which such forest reserve is situated in proportion to the acreage of such forest reserve in each county, and the state treasurer shall pay the several amounts so apportioned plus interest thereon, as provided in 17-3-211, to the respective counties.

History: En. Sec. 2, Ch. 26, L. 1915; re-en. Sec. 176, R.C.M. 1921; re-en. Sec. 176, R.C.M. 1935; R.C.M. 1947, 79-204; amd. Sec. 16, Ch. 703, L. 1985; amd. Sec. 2, Ch. 712, L. 1985.

Cross-References

Appropriation of state and federal money by county, 7-6-2218.

17-3-213. Allocation to general road fund and countywide school levies. (1) The forest reserve funds so apportioned to each county must be apportioned by the county treasurer in each county as follows:

(a) to the general road fund, 66 2⁄3% of the total amount received;

(b) to the following countywide school levies, 33 1⁄3% of the total sum received:

(i) county equalization for elementary schools provided for in 20-9-331; and

(ii) county equalization for high schools provided for in 20-9-333;

(iii) the county transportation fund provided for in 20-10-146; and

(iv) the elementary and high school district retirement fund obligations provided for in 20-9-501.

(2) The apportionment of money to the funds provided for under subsection (1)(b) must be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under this section is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (1)(b).

(3) In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 2⁄3% of the total amount received for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county.

History: En. Sec. 3, Ch. 26, L. 1915; re-en. Sec. 177, R.C.M. 1921; amd. Sec. 1, Ch. 66, L. 1931; re-en. Sec. 177, R.C.M. 1935; R.C.M. 1947, 79-205; amd. Sec. 1, Ch. 413, L. 1983; amd. Sec. 5, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 711, L. 1991.

Cross-References

Use of county road fund, 7-14-2513.

Basic county tax and other revenues for county equalization of elementary district BASE funding program, 20-9-331.

17-3-214. Correction of errors in apportionment. In the event of any error or errors made in the apportionment or distribution of said forest reserve funds, such error or errors shall be corrected by the state auditor and state treasurer, equalizing future payments to the several counties so that the total proportionate sum received by each county shall be as fixed in 17-3-212.

History: En. Sec. 4, Ch. 26, L. 1915; re-en. Sec. 178, R.C.M. 1921; re-en. Sec. 178, R.C.M. 1935; R.C.M. 1947, 79-206.

17-3-215 through 17-3-220 reserved.

17-3-221. State treasurer to be custodian of moneys received under Taylor Grazing Act. The state treasurer shall be the custodian of all moneys that the treasurer of the United States may transfer to the state of Montana under the terms of section 10 of the Taylor Grazing Act approved June 28, 1934, (Public No. 482), which provides that the secretary of the United States treasury pay one-half of the moneys received from each grazing district each year to the state where collected, to be expended as the legislature may prescribe.

History: En. Sec. 1, Ch. 146, L. 1935; re-en. Sec. 191.1, R.C.M. 1935; R.C.M. 1947, 79-701.

17-3-222. Apportionment of moneys to counties. It shall be the duty of the state treasurer to properly apportion and allocate these moneys to the county treasurers, who will allocate and pay all such moneys as follows: 50% to the county general fund and 50% to the common school fund of the county.

History: En. Sec. 2, Ch. 146, L. 1935; re-en. Sec. 191.2, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1937; amd. Sec. 1, Ch. 102, L. 1939; amd. Sec. 1, Ch. 96, L. 1949; R.C.M. 1947, 79-702.

Cross-References

Basic county tax and other revenues for county equalization of elementary district BASE funding program, 20-9-331.

17-3-223 through 17-3-230 reserved.

17-3-231. Flood Control Act — distribution of revenues to counties. All moneys received or hereafter to be received by the state from the secretary of the treasury of the United States, under and by virtue of the Flood Control Act of 1954, under 33 U.S.C.A. 701c-3, shall be distributed by the state to the county treasurers of the counties of the state wherein the flood control land is situated.

History: En. Sec. 1, Ch. 156, L. 1959; R.C.M. 1947, 79-2101.

Cross-References

Floodplain and floodway management, Title 76, ch. 5.

17-3-232. Deposit and expenditure of funds by counties. All moneys received or to be received by the county treasurers of the counties of the state wherein such flood control land is situated shall be deposited in the funds designated as the county common school tax fund and the general public road fund and shall be expended as follows: of all moneys received or to be received, 50% shall be expended for the benefit of the county common schools in the county concerned and 50% shall be expended for the benefit of the general public roads in the county concerned.

History: En. Sec. 2, Ch. 156, L. 1959; R.C.M. 1947, 79-2102.

Cross-References

City and county road funds, 7-14-2512.

Basic county tax and other revenues for county equalization of elementary district BASE funding program, 20-9-331.

Part 3

Federal Sums in Lieu of Taxes

Part Cross-References

Rate of privilege — tax credit for federal payments in lieu of taxes, 15-24-1204.

17-3-301. Definitions. The following definitions shall be applied to the terms used in this part:

(1) "Agreement" shall mean contract and shall include renewals and alterations of a contract.

(2) "Department" shall mean the department of revenue of the state of Montana.

(3) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States, located within this state, and shall include persons inhabiting such project.

(4) "Services" shall mean such public and state functions as are performed for property in and persons residing within this state.

(5) "State" shall mean the state of Montana.

(6) "United States" shall mean the United States of America.

History: En. Sec. 1, Ch. 58, L. 1939; amd. Sec. 203, Ch. 516, L. 1973; R.C.M. 1947, 84-5501.

17-3-302. Requests for sums in lieu of taxes and agreements to perform services. The department is hereby authorized and empowered to make requests of the United States for and on behalf of this state for payment of such sums in lieu of taxes as the United States may agree to pay and to consummate agreements with the United States, in the name of this state, for the performance of services by the state for the benefit of projects and for the payment by the United States to the state, in one or more installments, of such sums in lieu of taxes.

History: En. Sec. 2, Ch. 58, L. 1939; amd. Sec. 204, Ch. 516, L. 1973; R.C.M. 1947, 84-5502.

17-3-303. Basis for amount of payment. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to the state of performing services for the benefit of the projects during the period of agreement, after taking into consideration the benefits to be derived by the state from such projects, but shall not be in excess of the taxes which would result to the state for the period if the real property of the projects within the state were taxable.

History: En. Sec. 3, Ch. 58, L. 1939; R.C.M. 1947, 84-5503.

17-3-304. Duplicate of agreement — filing — receipt for tax. A duplicate copy of every agreement for payment of sums in lieu of taxes shall be filed in the office of the treasurer of this state. On or before the date on which any payment of sums in lieu of taxes is due, the state treasurer shall present a bill to the United States in the name of the state in the amount of such payment. The state treasurer shall give to the United States a receipt in the name of the state for all payments of sums in lieu of taxes.

History: En. Sec. 4, Ch. 58, L. 1939; R.C.M. 1947, 84-5504.

17-3-305. Disposal of moneys. All payments of sums in lieu of taxes received by this state shall be deposited in funds according to the state levies.

History: En. Sec. 5, Ch. 58, L. 1939; amd. Sec. 1, Ch. 42, L. 1947; R.C.M. 1947, 84-5505.

Parts 4 through 9 reserved

Part 10

Endowments

Part Cross-References

Montana State University, 20-25-424.

17-3-1001. State institutions which may take by gift, bequest, or grant. (1) The state of Montana, units of the Montana university system, the Montana school for the deaf and blind, all institutions in the department of corrections and human services, and any institutions now created or established or which may hereafter be created or established and supported in whole or in part by the state for any purpose may accept gifts, donations, grants, devises, or bequests of real or personal property from any source. Gifts, donations, grants, bequests, or devises may be made directly to the state, in the name of any of the institutions, to any officer or board of the institutions, or to any person in trust for the institutions.

(2) In the event it is made directly to any institution or to any officer or board of any institution, the gift, donation, grant, devise, or bequest is a gift, donation, grant, devise, or bequest to the state and shall be administered and used by the state for the particular purpose for which it was given, donated, granted, bequeathed, or devised. In the event no particular purpose is mentioned in the gift, grant, devise, or bequest, then it shall be used for the general support, maintenance, or improvement of such institution by the state.

History: En. Sec. 1, Ch. 17, L. 1913; re-en. Sec. 6978, R.C.M. 1921; re-en. Sec. 6978, R.C.M. 1935; amd. Sec. 96, Ch. 199, L. 1965; R.C.M. 1947, 91-105; amd. Sec. 3, Ch. 540, L. 1979; amd. Sec. 1, Ch. 262, L. 1991.

Cross-References

Sale of property when resolution passed after hearing — appeal procedure, 20-6-604.

Acceptance of donations, 20-15-109.

Acceptance of gifts and grants — contractual agreements, 20-31-401.

Institutions in Department of Family Services, 52-1-105.

Institutions in Department of Corrections and Human Services, 53-1-202.

Acceptance and administration of gifts and donations, 76-1-408.

Acquisition and designation of real property by public body, 76-6-106.

Acquisition of conservation easements by qualified private organizations, 76-6-204.

Acquisition and management of property, 76-15-404.

Acceptance of gifts, donations, grants, legacies, and devises to the state, 77-1-213.

17-3-1002. Persons who may make gifts to state institutions. (1) A donation, gift, grant, bequest, devise, or testamentary disposition of property, real or personal, may be made by any person over the age of 18 years and of sound mind to the state, a unit of the Montana university system, the state school for deaf and blind, an institution in the department of corrections and human services, and any and all institutions now created or established or which may hereafter be created or established and supported, in whole or in part, by the state for any purpose. Any person, corporation, or association of persons may make any gift, donation, or grant of property, real or personal, to the state, or to any of the institutions above-named or referred to.

(2) In the event any gift, donation, grant, devise, or bequest shall be made to any such institution or to any officer or board of any such institution, the same shall be construed as a gift, donation, grant, devise, or bequest to the state and shall be administered and used for the state for the particular purpose for which the same was given, donated, granted, bequeathed, or devised. In the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of such institution by the state.

History: En. Sec. 2, Ch. 17, L. 1913; re-en. Sec. 6979, R.C.M. 1921; re-en. Sec. 6979, R.C.M. 1935; amd. Sec. 97, Ch. 199, L. 1965; R.C.M. 1947, 91-106; amd. Sec. 1, Ch. 262, L. 1991.

17-3-1003. *(Temporary)* **Support of state institutions.** (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under Title 77, chapter 1, part 6, the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except revenues pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid over to the state treasurer who shall deposit the money to the credit of the proper fund.

(2) Except as provided in subsection (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) All money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution. *(Terminates June 30, 1995—sec. 12, Ch. 533, L. 1993.)*

17-3-1003. *(Effective July 1, 1995)* **Support of state institutions.** (1) For the support and endowment of each state institution, there is annually and perpetually appropriated the income from all permanent endowments therefor and from all land grants as provided by law. All moneys received or collected in connection with such endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except revenues pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of such obligations or moneys which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the proper fund.

(2) Except as provided in subsection (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution shall be deposited with the state treasurer of Montana for each of such institutions, to the credit of the state special revenue fund.

(3) All money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution.

History: (1)En. Sec. 3, Ch. 112, L. 1921; re-en. Sec. 194, R.C.M. 1921; re-en. Sec. 194, R.C.M. 1935; amd. Sec. 3, Ch. 14, L. 1941; amd. Sec. 11, Ch. 147, L. 1963; amd. Sec. 3, Ch. 298, L. 1973; Sec. 79-601, R.C.M. 1947; (2)En. Sec, 1, Ch. 120, L. 1909; re-en. Sec. 1922, R.C.M. 1921; re-en. Sec. 1922, R.C.M. 1935; amd. Sec. 1, Ch. 89, L. 1961; amd. Sec. 24, Ch. 147, L. 1963; amd. Sec. 5, Ch. 286, L. 1977; Sec. 79-1401, R.C.M. 1947; R.C.M. 1947, 79-601, 79-1401; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 3, Ch. 700, L. 1989; amd. Sec. 2, Ch. 14, Sp. L. January 1992; amd. Sec. 5, Ch. 533, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 533 in (1), near beginning after "appropriated", inserted "after any deductions made under Title 77, chapter 1, part 6"; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

Cross-References

The Enabling Act, sec. 11.

Fund structure, 17-2-102.

Miscellaneous finance — University System, Title 20, ch. 25, part 4.

State institutions, Title 53, ch. 1, part 2.

17-3-1004. Disbursement of funds. (1) The money received by the state treasurer under the provisions of 17-3-1003 shall be paid out by him only on warrant issued by the state auditor in payment of claims for expenses actually incurred for the support and maintenance of the institution filing the same.

(2) In the payment of claims presented by a state institution entitled to interest and income from land grants or moneys arising therefrom, no warrant shall be drawn against the appropriation made by the state out of the general fund for the maintenance of the institution filing the claim until interest and income moneys, insofar as they are available for the payment of the items in the claim, are exhausted.

History: (1)En. Sec. 2, Ch. 120, L. 1909; re-en. Sec. 1923, R.C.M. 1921; re-en. Sec. 1923, R.C.M. 1935; amd. Sec. 2, Ch. 89, L. 1961; Sec. 79-1402, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1909; re-en. Sec. 1924, R.C.M. 1921; re-en. Sec. 1924, R.C.M. 1935; amd. Sec. 3, Ch. 89, L. 1961; amd. Sec. 25, Ch. 147, L. 1963; Sec. 79-1403, R.C.M. 1947; R.C.M. 1947, 79-1402, 79-1403.

CHAPTER 4

DEBT COLLECTION

Part 1 — Debt Collection Service

17-4-101. Definitions.
17-4-102. Accounts of persons indebted to state.
17-4-103. Collection of claims by state auditor.
17-4-104. Circumstances when state auditor must assist.
17-4-105. Authority to collect debt — offsets.
17-4-106. Agency owed debt to receive all money collected — exception.
17-4-107. Write-off procedures.
17-4-108. Circumstances under which previously written-off debt may be collected.
17-4-109. Debts not collectible under this part.
17-4-110. State agencies to adopt rules.
17-4-111. Right of hearing to aggrieved persons.

Chapter Cross-References

Counterclaim against the state, Rule 13(d), M.R.Civ.P. (see Title 25, ch. 20).

Debtor and creditor relationships, Title 31, ch. 2.

Part 1

Debt Collection Service

17-4-101. Definitions. In this part, the following definitions apply:

(1) The word "department" means the department of revenue.

(2) The term "state agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

History: En. 84-7102 by Sec. 2, Ch. 118, L. 1974; R.C.M. 1947, 84-7102.

17-4-102. Accounts of persons indebted to state. (1) In his discretion it is the duty of the state auditor to:

(a) examine and settle the accounts of persons indebted to the state and certify the amount to the treasurer and, upon presentation and filing of the treasurer's receipt therefor, to give such person a discharge and charge the treasurer therewith;

(b) require any person presenting an account for settlement to be sworn before him and to answer, orally or in writing, as to any facts relating to it.

(2) The certificate mentioned in subsection (1)(a) must show by whom the payment is to be made, the amount thereof, and the fund into which it is to be paid and must be numbered in order, beginning with number 1 at the commencement of each fiscal year.

History: (1)En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-101, R.C.M. 1947; (2)En. Sec. 421, Pol. C. 1895; re-en. Sec. 171, Rev. C. 1907; re-en. Sec. 152, R.C.M. 1921; Cal. Pol. C. Sec. 434; re-en. Sec. 152, R.C.M. 1935; amd. Sec. 2, Ch. 94, L. 1969; Sec. 79-102, R.C.M. 1947; R.C.M. 1947, 79-101(7), (8), 79-102.

17-4-103. Collection of claims by state auditor. (1) In his discretion, it is the duty of the state auditor to examine the collection of money due the state and institute suits in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue and against persons who possess public money or property and fail to pay over or deliver the money or property and against debtors of the state. The courts of the county where the seat of government may be located have jurisdiction, without regard to the residence of the defendants, over the collection suits authorized by this section.

(2) Whenever a person has money or other personal property that belongs to the state by escheat or otherwise or has been entrusted with the collection, management, or disbursement of money, bonds, or interest accruing from the money or bonds, belonging to or held in trust by the state, and fails to render an account of the money or personal property to and make settlement with the state auditor within the time prescribed by law or, when no particular time is specified, fails to render an account and make settlement or who fails to pay into the state treasury the money belonging to the state, upon being required to do so by the state auditor, within 20 days after the requisition, the state auditor shall state an account with that person, charging 25% damages and interest at the rate of 10% a year from the time of the failure. A copy of the account in a suit is prima facie evidence of the things stated in the account, but when the state auditor cannot for want of information state an account, he may in an action brought by him aver that fact and allege generally the amount of money or other property due or belonging to the state.

(3) The state auditor may assist in the collection of a delinquent account owing to any state agency and may separately charge the state agency that transferred the debt for the cost of assistance. The state auditor may designate the percentage of collected proceeds to be retained for the cost of assistance.

(4) The state auditor may provide a collection service for the general purpose of centralizing the collection of all debts owing to the state.

History: (1)En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-101, R.C.M. 1947; (2)En. Sec. 424, Pol. C. 1895; re-en. Sec. 174, Rev. C. 1907; re-en. Sec. 155, R.C.M. 1921; Cal. Pol. C. Sec. 437; re-en. Sec. 155,

R.C.M. 1935; Sec. 79-105, R.C.M. 1947; (3)En. 84-7103 by Sec. 3, Ch. 118, L. 1974; Sec. 84-7103, R.C.M. 1947; (4)En. 84-7101 by Sec. 1, Ch. 118, L. 1974; Sec. 84-7101, R.C.M. 1947; R.C.M. 1947, 79-101(12), 79-105, 84-7101, 84-7103; amd. Sec. 1, Ch. 419, L. 1989; amd. Sec. 1, Ch. 97, L. 1991.

Cross-References

Collection of delinquent taxes — warrant for distraint, Title 15, ch. 1, part 7.

Reporting delinquent taxes, Title 15, ch. 16, part 3.

Liens and limitations, Title 15, ch. 16, part 4.

Collection by suit, Title 15, ch. 16, part 5.

Venue for actions to recover statutory penalty or forfeiture, 25-2-124.

Legal interest, 31-1-106.

17-4-104. Circumstances when state auditor must assist. Subject to and in accordance with rules adopted by the state auditor, the state auditor shall render assistance in the collection of accounts owing to any state agency if all of the following procedures have been completed to his satisfaction:

(1) A state agency must make all reasonable efforts to collect money owed to it and must determine that the money and any interest or penalties therefor are uncollectible in accordance with criteria for uncollectibility formulated by that agency.

(2) Once a state agency has determined an account owed to it uncollectible, it shall certify to the state auditor the amount of the money, interest, and penalties, as accurately as can be determined. The state auditor may require submission by the agency of all relevant evidence and other information regarding the debt and may examine the records of any other state agency which may be pertinent in determining the uncollectibility of the debt unless examination is specifically prohibited by law.

(3) If the state auditor finds that the debt is uncollectible in accordance with the criteria for uncollectibility of money due that state agency, he shall direct the agency to write off the debt on its accounts and transfer the debt to him.

(4) Debts described in 17-4-105(4) need not be determined uncollectible for purposes of this section.

History: En. 84-7104 by Sec. 4, Ch. 118, L. 1974; amd. Sec. 1, Ch. 248, L. 1977; R.C.M. 1947, 84-7104; amd. Sec. 2, Ch. 419, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State agencies to adopt rules, 17-4-110.

17-4-105. Authority to collect debt — offsets. (1) Once a debt of a state agency has been transferred to the state auditor, the state auditor has the authority to collect it. The state auditor may contract with commercial collection agencies for recovery of debts owed the state.

(2) The state auditor shall offset any amount due a state agency from a person or entity against any amount, including refunds or taxes, owing the person or entity by any state agency, provided the state auditor may not exercise this right of offset until the debtor has first been notified by the state auditor and been given an opportunity for a hearing. An offset may not be made against any amount paid out as child support collected by the department of social and rehabilitation services. The state auditor shall deduct from the claim and draw warrants for the amounts offset in favor of the respective state agencies to which due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount

available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner as the state auditor, in the state auditor's discretion, determines.

(3) (a) The department retains the power to offset tax refunds due individuals against taxes owed the state, provided the department may not exercise this right of offset until the taxpayer has been notified by the department and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

(c) Appeal from the decision of the department after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and any decision made as a result of that proceeding has become final.

(4) (a) A debt owed to the department of social and rehabilitation services or being collected by the department of social and rehabilitation services on behalf of any person or agency may be offset by the state auditor if the debt is being enforced or collected by the department of social and rehabilitation services under Title IV-D of the Social Security Act.

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the state auditor for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and any decision made as a result of that proceeding has become final. The hearing must be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of social and rehabilitation services shall adopt rules necessary to determine the hearing procedures.

(5) If, in the discretion of the state auditor, the person or entity refuses or neglects to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity; if approved by the department of administration, it shall have the same force and effect as though filed by the person or entity. The amount due any person or entity from the state or any agency of the state is the net amount otherwise owing the person or entity after any offset as provided in this section.

History: **(1)En. 84-7105 by Sec. 5, Ch. 118, L. 1974; amd. Sec. 2, Ch. 248, L. 1977; Sec. 84-7105, R.C.M. 1947; (2), (3)En. Sec. 420, Pol. C. 1895; re-en Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974.; Sec. 79-101, R.C.M. 1947; R.C.M. 1947, 79-101(13), 84-7105; amd. Sec. 2, Ch. 160, L. 1985; amd. Sec. 1, Ch. 679, L. 1985; amd. Sec. 3, Ch. 419, L. 1989; amd. Sec. 28, Ch. 702, L. 1989; amd. Sec. 2, Ch. 429, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 429 in (4)(a), after "A debt", deleted "resulting from or relating to a child support obligation"; deleted (4)(a)(ii) and (4)(a)(iii) that read: "(ii) the debt is for repayment of child support payments retained contrary to the assignment at 53-2-613; or

(iii) the debt is for costs of fees under any contract, judgment, or administrative order entered in the course of child support enforcement by the department of social and rehabilitation services"; in (4)(c) inserted second sentence disallowing hearing to person owing valid debt; and made minor changes in style.

Cross-References

Notice, 2-4-601.

Credits and refunds — period of limitations, 15-30-149.

Department of Revenue authorized to collect delinquent taxes by offset of tax refunds or wages, 15-30-310.

Motor vehicle regulation in university system — fees and fines, 20-25-312.

17-4-106. Agency owed debt to receive all money collected — exception. (1) All money collected by the state auditor on debts transferred to him by the various state agencies, except funds collected under 17-4-103(3), must be deposited to the account or fund of the agency to which the debt was originally owing.

(2) Funds collected under 17-4-103(3) must be deposited in an account in the internal service fund for the cost of assistance of debt collection by the state auditor. Funds deposited in excess of the amount appropriated for operation of the debt collection program must be carried forward into the next fiscal year for operation of the debt collection program. Any excess carried forward into the next fiscal year will be used to reduce the designated percentage of the collected proceeds charged to the various state agencies. At the end of each biennium, any fund balance in excess of $10,000 must be transferred back to the general fund.

History: En. 84-7106 by Sec. 6, Ch. 118, L. 1974; amd. Sec. 3, Ch. 248, L. 1977; R.C.M. 1947, 84-7106; amd. Sec. 4, Ch. 419, L. 1989; amd. Sec. 2, Ch. 97, L. 1991.

17-4-107. Write-off procedures. (1) The state auditor may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies that have been transferred to the state auditor's office pursuant to 17-4-104 and that are uncollectible or the continued pursuance of the collection of accounts would cost the state more than the amount collected. The procedures must be established in accordance with subsection (2).

(2) The department of administration may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies which are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. The procedures must include the reporting to the budget director of any canceling and writing off of accounts receivable.

History: (1)En. 84-7107 by Sec. 7, Ch. 118, L. 1974; amd. Sec. 4, Ch. 248, L. 1977; Sec. 84-7107, R.C.M. 1947; (2)En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50. Ch. 326, L. 1974; Sec. 82-110, R.C.M. 1947; R.C.M. 1947, 82-110(3), 84-7107; amd. Sec. 5, Ch. 419, L. 1989; amd. Sec. 22, Ch. 112, L. 1991; amd. Sec. 19, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 in second sentence of (2), after "reporting", substituted "to the budget director" for "as provided in 5-11-210"; and made minor changes in style.

17-4-108. Circumstances under which previously written-off debt may be collected. If a debt previously written off under 17-4-107(1) subsequently becomes collectible, the state auditor shall proceed to collect the money due pursuant to 17-4-105(1) and 17-4-106.

History: En. 84-7108 by Sec. 8, Ch. 118, L. 1974; R.C.M. 1947, 84-7108; amd. Sec. 6, Ch. 419, L. 1989.

17-4-109. Debts not collectible under this part. This part does not apply to unliquidated debts and to debts owed to a state agency for which a procedure for compromise, release, discharge, waiver, cancellation or other form of settlement thereof for reasons other than uncollectibility is by law made specifically applicable to such state agency.

History: En. 84-7109 by Sec. 9, Ch. 118, L. 1974; R.C.M. 1947, 84-7109.

17-4-110. State agencies to adopt rules. All state agencies shall adopt rules and forms to participate in and carry out the provisions of this part.

History: En. 84-7110 by Sec. 10, Ch. 118, L. 1974; R.C.M. 1947, 84-7110.

17-4-111. Right of hearing to aggrieved persons. Any person aggrieved from a decision or an action taken under this part shall have the right to present his grievances in the same manner as provided by 17-4-105(3) and subject to the contested case procedures of the Montana Administrative Procedure Act for taxpayer appeals.

History: En. 84-7111 by Sec. 11, Ch. 118, L. 1974; R.C.M. 1947, 84-7111; amd. Sec. 7, Ch. 419, L. 1989.

Cross-References

Appeal procedure, Title 15, ch. 2, part 3.

CHAPTER 5

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County finance — bonds and warrants, Title 7, ch. 7, part 22.

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Board of Natural Resources and Conservation — water conservation revenue bonds, 85-1-301 through 85-1-303.

Bonds of irrigation districts, Title 85, ch. 7, part 20.

Bonds of drainage districts, 85-8-501, 85-8-504, 85-8-702.

Bonds of conservancy districts, 85-9-621.

County, city bonds of industrial development project, 90-5-103, 90-5-104.

Part 1

Rates of Interest — Notice

17-5-101. Definitions. The following terms, as used in this part, have the following meanings:

(1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or

evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(3) "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state but shall not include the state of Montana, the board of examiners, the division of water resources of the department of natural resources and conservation, the state highway commission, or any other board, agency, or commission of the state.

History: En. Sec. 1, Ch. 234, L. 1971; R.C.M. 1947, 79-2601.

17-5-102. Rate of interest on bonds to be determined by governing bodies. (1) Bonds of a political subdivision shall bear interest at such rate or rates as its governing body shall determine.

(2) The provisions of this section establish the rate of interest on bonds of political subdivisions as defined in 17-5-101 and expressly supersede any other statutory limitation on the rate of interest to be borne by bonds of political subdivisions.

History: En. Sec. 2, Ch. 234, L. 1971; R.C.M. 1947, 79-2602; amd. Sec. 10, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

17-5-103. Rate of interest on special assessments determined by governing bodies — limitations. All special assessments levied by a political subdivision shall bear interest at such rate or rates as its governing body shall determine, except that no such rate shall exceed the greater of 7% per annum or, in the event that the special assessments are appropriated for the payment of principal and interest on bonds issued by the political subdivision, the rate of interest on said bonds.

History: En. Sec. 3, Ch. 234, L. 1971; R.C.M. 1947, 79-2603.

17-5-104. Effect of revisions on bonds previously authorized. If prior to April 23, 1981, a political subdivision was authorized to issue bonds pursuant to a law that limited the rate of interest on the bonds, it may issue all of the bonds so authorized under the provisions of 17-5-102 even if the rate of interest on the bonds exceeds the maximum rate permissible prior to April 23, 1981.

History: En. Sec. 17, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

17-5-105. Redemption of bonds — optional method. Between April 23, 1981, and July 1, 1983, a governing body in connection with the issuance of bonds may, at its option, provide that such bonds shall be redeemable at such time or times and upon such terms and conditions as the governing body shall deem to be in the best interest of the public, notwithstanding any statutory provision to the contrary.

History: En. Sec. 18, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

17-5-106. Notice of public bond sale. Notwithstanding any other provision of state law relating to the publication of notice in advance of the sale of bonds, it is sufficient to publish the notice once a week for 2 consecutive weeks preceding the sale.

History: En. Sec. 1, Ch. 173, L. 1987.

Part 2
Bond Validating Act

17-5-201. Short title. This part may be cited as the "Bond Validating Act".

History: En. 79-2001 by Sec. 1, Ch. 265, L. 1975; amd. Sec. 1, Ch. 564, L. 1977; R.C.M. 1947, 79-2001.

17-5-202. Definitions. The following terms, wherever used or referred to in this part, have the following meanings:

(1) "Bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, income, or property of a public body, including all instruments or obligations payable from a special fund.

(2) "Public body" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state or any commission, authority, or agency of a political or governmental subdivision, and also includes the board of public education, the board of regents of higher education, the board of examiners, the board of natural resources and conservation, the state highway commission, or any other governmental agency of this state.

History: En. 79-2002 by Sec. 2, Ch. 265, L. 1975; amd. Sec. 1, Ch. 486, L. 1975; amd. Sec. 2, Ch. 564, L. 1977; R.C.M. 1947, 79-2002; amd. Sec. 1, Ch. 282, L. 1981.

17-5-203. Validation. All bonds issued by any public body and all proceedings taken for the authorization and issuance of such bonds; for the levy, establishment, pledge, and appropriation of taxes, special assessments and other charges, and revenues to pay such bonds; and for the sale, exchange, execution, and delivery thereof, prior to the date set by and subject to the conditions set forth in 17-5-204, are validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such public body or the governing board or commission or officers thereof to authorize and issue such bonds or to sell, exchange, execute, or deliver the same and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution, or delivery, and bonds of such public bodies under the authority of such proceedings are binding, legal, valid, and enforceable obligations of such public body.

History: En. 79-2003 by Sec. 3, Ch. 265, L. 1975; amd. Sec. 3, Ch. 564, L. 1977; R.C.M. 1947, 79-2003.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Local government debt, Art. VIII, sec. 10, Mont. Const.

17-5-204. Period of application. (1) This part does not apply to or affect any action or appeal instituted on or before the date to which it has most recently been extended, in which the validity of any such proceeding or of any such bonds is at issue.

(2) The application of this part may be extended by act of the legislature to any date provided therein.

History: **En. 79-2004 by Sec. 4, Ch. 265, L. 1975; amd. Sec. 2, Ch. 486, L. 1975; amd. Sec. 4, Ch. 564, L. 1977; R.C.M. 1947, 79-2004; amd. Sec. 1, Ch. 2, L. 1979.**

17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to February 8, 1993.

History: **En. Sec. 5, Ch. 564, L. 1977; R.C.M. 1947, 79-2005; amd. Sec. 2, Ch. 2, L. 1979; amd. Sec. 2, Ch. 282, L. 1981; amd. Sec. 1, Ch. 576, L. 1983; amd. Sec. 1, Ch. 182, L. 1985; amd. Sec. 1, Ch. 89, L. 1987; amd. Sec. 1, Ch. 159, L. 1989; amd. Sec. 1, Ch. 187, L. 1991; amd. Sec. 1, Ch. 19, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 19 at end substituted "February 8, 1993" for "March 26, 1991"; and made minor changes in style. Amendment effective February 8, 1993.

Part 3

Refunding Bonds

Part Cross-References

Municipal refunding revenue bonds — option 1, Title 7, ch. 7, part 45.

The Revenue Bond Refinancing Act of 1937, Title 7, ch. 7, part 46.

Crossover refunding bonds — provisions, Title 17, ch. 5, part 21.

17-5-301. Refunding bonds or debentures authorized — interest rate. The board of examiners is hereby authorized and empowered to refund any issue of bonds, highway or other debentures heretofore issued by the state and which are outstanding or which may hereafter be issued by the state whenever in the judgment of such board it shall be deemed for the best interests of the state to do so. Refunding bonds or debentures shall not be issued in any greater amount than will be required to pay the principal and interest of the bonds or debentures to be refunded, costs of issuance, plus any defaulted interest thereon.

History: **En. Sec. 1, Ch. 5, L. 1945; R.C.M. 1947, 79-1801; amd. Sec. 7, Ch. 184, L. 1983.**

17-5-302. Character of bonds — amortization or serial. (1) All refunding bonds or debentures issued by the board of examiners under the provisions of this part shall be either amortization bonds, as defined by the statutes of the state, or serial bonds. Each issue of refunding bonds or debentures shall bear upon their face such statement as may be necessary to show that they are refunding bonds or debentures and the bonds or debentures which are issued to refund. Each bond and debenture shall bear the signature of each member of the board of examiners and shall have affixed thereto the great seal of the state of Montana. Each serial bond thereof shall have coupons attached thereto showing the semiannual payments due thereon, which coupons shall bear the signature of each member of the board of examiners.

(2) The board of examiners shall prescribe all other details for the form, notice, and time of sale of the bonds or debentures.

(3) They shall be registered in the office of the state treasurer in a book to be provided for that purpose.

History: **En. Sec. 2, Ch. 5, L. 1945; amd. Sec. 11, Ch. 260, L. 1959; R.C.M. 1947, 79-1802.**

Cross-References

Facsimile signatures and seals, 2-16-114.

17-5-303. Application of refunding bond law. All of the provisions of the act authorizing the issuance of the bonds or debentures which are to be refunded, insofar as the same relate to the issuance and sale, term and rate of interest, tax levies or funds for the payment and interest thereof, and time and manner of such payments, shall apply fully to such refunding bonds or debentures, except insofar as the same may be in conflict with the provisions of this part or with the provisions of any law authorizing particular refunding bonds.

History: En. Sec. 4, Ch. 5, L. 1945; R.C.M. 1947, 79-1804; amd. Sec. 8, Ch. 184, L. 1983.

17-5-304. Cost and expense of refunding. The board of examiners may require the purchaser to bear the cost and expense of refunding any issue of bonds or debentures in connection with the bid submitted, or the cost and expense may be paid out of the sinking and interest fund when there is money in such fund. The balance remaining in such sinking and interest fund shall be transferred in accordance with the provisions under which the refunded bonds were issued or as otherwise provided by law.

History: En. Sec. 5, Ch. 5, L. 1945; R.C.M. 1947, 79-1805; amd. Sec. 9, Ch. 184, L. 1983.

17-5-305. Sale of bonds and debentures. The refunding bonds or debentures which may be issued under the provisions of this part shall be sold by the board of examiners in such manner as they shall deem for the best interests of the state, provided that:

(1) none thereof shall be sold at less than its par value; and

(2) if the state shall hold any bonds or debentures to be refunded by any such issue of refunding bonds or debentures as investments of institutional or other funds, the same may be exchanged for the refunding bonds or debentures if such exchange be authorized by the proper state officers or board.

History: En. Sec. 3, Ch. 5, L. 1945; R.C.M. 1947, 79-1803; amd. Sec. 10, Ch. 184, L. 1983.

Part 4

Long-Range Building Program Bonds

Part Cross-References

Cigarette tax to retirement of long-range building bonds, 16-11-111.

Further long-range building bonds not to be issued under part, 17-5-802.

Long-range building program and budget, Title 17, ch. 7, part 2.

Liability of officers for failure to create debt service fund type for bond payment, 20-9-444.

17-5-401. Definitions. (1) "Board", "department", and "treasurer" mean the board of examiners, department of administration, and state treasurer, respectively.

(2) "Capital projects fund" means a separate long-range building program fund which is created within the capital projects fund type established in 17-2-102.

(3) "Costs" includes those expenses related to acquiring land; planning, design, and construction of capital projects and of buildings as defined in

18-2-101; or any other administrative expenses of the department, including legal fees, incurred in the performance of its duties under Title 18, chapter 2.

(4) "Debt service account" means a separate long-range building program fund which is created within the debt service fund type established in 17-2-102.

(5) "Long-range building program" means and includes all buildings, structures, and facilities to be constructed, repaired, used, equipped, or furnished and land to be acquired therefor with the consent of the legislature in accordance with 17-7-202 and 18-2-101 through 18-2-105.

(6) "Long-range building program bonds" means and includes all series of bonds issued to finance any portion of the long-range building program or to refund outstanding bonds, as authorized in this part.

History: En. Sec. 1, Ch. 276, L. 1965; amd. Sec. 1, Ch. 510, L. 1973; R.C.M. 1947, 79-2201(part); amd. Sec. 1, Ch. 298, L. 1983; amd. Sec. 1, Ch. 372, L. 1985.

Cross-References

Board of Examiners continued in Department of Administration, 2-15-1007.

Further long-range building bonds not to be issued under part, 17-5-802.

17-5-402. Authority to issue long-range building program bonds. (1) When authorized by the vote of two-thirds of the members of each house of the legislature or of a majority of the electors voting thereon, if so provided by law, and within the limits of such authorization and the further limitations in this section and 17-5-403, the board may issue and sell bonds of the state in such manner as it shall deem necessary and proper to provide funds to finance the long-range building program. Bonds may be issued hereunder to provide funds for the payment or redemption of long-range building program bonds issued under this section.

(2) The full faith and credit and taxing powers of the state shall be pledged for the payment of all bonds issued pursuant to this part after January 1, 1973, with all interest thereon and premiums payable upon the redemption thereof.

History: En. Sec. 2, Ch. 276, L. 1965; amd. Sec. 2, Ch. 318, L. 1967; amd. Sec. 1, Ch. 146, L. 1969; amd. Sec. 1, Ch. 222, L. 1971; amd. Sec. 2, Ch. 510, L. 1973; R.C.M. 1947, 79-2202(part).

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Facsimile signatures of public officials, 2-16-114.

Further long-range building bonds not to be issued under part, 17-5-802.

Student building fees at Montana State University, 20-25-401.

17-5-403. Form, principal and interest, fiscal agent, and deposit of proceeds. (1) Each series of such bonds shall be issued by the board upon request of the department, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at such rate or rates, maturing at such times not exceeding 30 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state as the board shall determine subject to the limitations contained in this section and 17-5-402.

(2) In the issuance of each series of such bonds, the amount, maturities, and interest rates thereof shall be fixed in such manner that the maximum

amount of principal and interest to become due in any subsequent fiscal year on all such bonds then outstanding and on the series so to be issued will not exceed 50% of the average annual amount collected during the 3 then next preceding fiscal years from the special taxes pledged by law to the debt service account at the time of such issuance, except that this provision shall not constitute a covenant of the state for the security of the bonds issued pursuant to this part after January 1, 1973, and the state reserves the right to amend this subsection in any manner after all bonds issued prior to that date and the interest thereon have been fully paid or the state's liability thereon has been otherwise fully discharged.

(3) In all other respects the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the board, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board is hereby authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

(5) All proceeds of bonds issued hereunder shall be deposited in the capital projects fund, except that any premiums and accrued interest received shall be deposited in the debt service account.

History: En. Sec. 2, Ch. 276, L. 1965; amd. Sec. 2, Ch. 318, L. 1967; amd. Sec. 1, Ch. 146, L. 1969; amd. Sec. 1, Ch. 222, L. 1971; amd. Sec. 2, Ch. 510, L. 1973; R.C.M. 1947, 79-2202(part); amd. Sec. 2, Ch. 298, L. 1983.

Cross-References

Facsimile signatures of public officials, 2-16-114.

Further long-range building bonds not to be issued under part, 17-5-802.

17-5-404. Use of capital projects fund. The capital projects fund shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program. The department may transfer all money authorized by the legislature for its administrative expenditures from the capital projects fund to a special revenue fund, and for such purposes the money is statutorily appropriated as provided in 17-7-502.

History: En. Sec. 1, Ch. 276, L. 1965; amd. Sec. 1, Ch. 510, L. 1973; R.C.M. 1947, 79-2201(part); amd. Sec. 3, Ch. 298, L. 1983; amd. Sec. 2, Ch. 372, L. 1985; amd. Sec. 17, Ch. 703, L. 1985.

Cross-References

Board of Examiners continued in Department of Administration, 2-15-1007.

Fund structure, 17-2-102.

Maintenance of fund and account records and interfund loans, 17-2-105.

17-5-405. Debt service account. (1) From and after the pledge and appropriation of any special tax to the debt service account, as provided and contemplated in this section, 17-5-407, and 17-5-408, such tax shall continue in force and shall be available and shall be pledged and appropriated for the payment of long-range building program bonds, and all moneys received from the collection thereof shall be deposited by the treasurer to the credit of the debt service account.

(2) No special taxes pledged to the debt service account on January 1, 1973, shall be discontinued or diverted to other funds until all bonds issued pursuant to this part prior to that date and the interest thereon have been fully paid or the state's liability thereon has been fully discharged, except to the extent, if any, that the right so to do has been reserved in the resolutions authorizing the issuance of such bonds.

(3) Subject to the provisions of subsections (1) and (2), the state reserves the right to modify from time to time the nature and amount of special taxes to be deposited to the credit of the debt service account.

(4) Money in the debt service account shall be used: first, to pay interest and principal when due on long-range building program bonds; second, to accumulate a reserve in the amount required below, for the further security of such payments; and third, to maintain this reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal which will become due on all such bonds which are then outstanding in any subsequent fiscal year.

(5) Money at any time received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection (4) shall be transferred by the treasurer to the general fund. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection (4), the treasurer shall credit to said account an amount sufficient to restore said balance from the next collections of the special taxes appropriated to said account and from any other collections of taxes appropriated to the general fund, not exceeding the aggregate amount theretofore transferred from the debt service account to the general fund.

History: En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973; R.C.M. 1947, 79-2203(1) thru (3); amd. Sec. 4, Ch. 298, L. 1983.

Cross-References

Fund structure, 17-2-102.

Amount authorized and reservation of future authorizations — payment, 17-5-503.

State pledge of gasoline tax — use, 17-5-507.

17-5-406. Use of debt service account. The debt service account shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay long-range building program bonds and interest thereon when due so long as any such bonds or interest remain unpaid.

History: En. Sec. 1, Ch. 276, L. 1965; amd. Sec. 1, Ch. 510, L. 1973; R.C.M. 1947, 79-2201(part); amd. Sec. 5, Ch. 298, L. 1983.

Cross-References

Fund structure, 17-2-102.

17-5-407. Reservation of power to pledge taxes — redemption — refunding bonds. (1) The state reserves the power, by enactment of the legislature or the people, to levy, impose, and assess and to pledge and appropriate to the debt service account any tax specially designated therein or any specified amount or percentage of the collections of such special tax. The state also reserves the power to appropriate any funds designated by enactment of the legislature or the people for the redemption and prepayment of any long-range building program bonds or to authorize the issuance and sale of bonds for the purpose of refunding any such outstanding bonds or interest thereon, upon such terms and conditions as may be provided in said enactments and consistent with covenants and agreements made for the security of the outstanding bonds.

(2) Refunding bonds issued in advance of the maturity of the bonds refunded shall be issued only subject to the conditions stated in 17-5-403(2), substituting for this purpose the principal and interest requirements of the refunding bonds for those of the bonds refunded.

(3) Nothing herein shall prevent the board from issuing and selling refunding bonds, payable from the debt service account, to provide funds for payment of principal or interest due on long-range building program bonds when and if and to the extent that the debt service account is insufficient for this purpose.

History: En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973; R.C.M. 1947, 79-2203(4); amd. Sec. 6, Ch. 298, L. 1983.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

17-5-408. Percentage of income, corporation license, and cigarette tax pledged. (1) (a) The state pledges and appropriates and directs to be credited as received to the debt service account money received from the collection of the individual income tax and, except as provided in 15-31-702, money received from the collection of the corporation license and income tax, as provided in 15-1-501, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4).

(b) The pledge and appropriation made by this section are a first and prior charge upon all money received from the collection of the enumerated taxes.

(2) Except for the amount credited to the veterans' home maintenance and improvement account under 16-11-119, the state pledges and appropriates and directs to be credited to the debt service account 79.75% of all remaining money received from the collection of the excise tax on cigarettes that is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the debt service account all money received from the collection of the taxes on other tobacco products that are or may be imposed for that purpose, including the tax imposed by 16-11-202. This section does not impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation made by this section are a first and prior charge upon all money received from the collection of all taxes referred to in this subsection.

History: En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973; R.C.M. 1947, 79-2203(5), (6); amd. Sec. 14, Ch. 634, L. 1979; amd. Sec. 4, Ch. 267, L. 1981; amd. Sec. 7, Ch. 298, L. 1983; amd. Sec. 3, Ch. 608, L. 1983; amd. Sec. 2, Ch. 450, L. 1985; amd. Sec. 3, Ch. 704, L. 1985; amd. Sec. 2, Ch. 666, L. 1987; amd. Sec. 4, Ch. 681, L. 1989; amd. Sec. 91, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 548, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 548 near beginning of (1)(a), after "account", deleted "9.8% for fiscal year 1990 and 8.7% for fiscal year 1991 of all", near middle, after "income tax and", deleted "11% for fiscal year 1990 and 10.5% for fiscal year 1991 of all money", after "15-31-702" inserted "money", and after "15-1-501" deleted "and such additional amount of said taxes, if any"; deleted former first sentence of (1)(b) that read: "No more than the percentages described in subsection (1)(a) of such tax collections may be pledged for the purpose of 17-5-403(2)"; at beginning of first sentence of (2) inserted exception clause and near middle increased amount credited to the debt service account from 70.89% to 79.75%; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Disposition of cigarette taxes, 16-11-119.

17-5-409. Waiver of security provisions. If so stated in any series of bonds issued hereunder, the purchasers and holders thereof may by their purchase and retention of the same waive in whole or in part the security otherwise made available for such bonds by any provision of this part.

History: En. Sec. 4, Ch. 276, L. 1965; amd. Sec. 4, Ch. 510, L. 1973; R.C.M. 1947, 79-2204.

17-5-410. Authorization of bonds. The board is authorized to issue and sell long-range building program bonds in an amount not exceeding $31,550,505, over and above the amount of the long-range building program bonds outstanding January 1, 1981, upon the conditions and in the manner stated in this part. The board is also authorized to issue and sell long-range building program bonds in such amount as may be required to provide funds for the payment or redemption of outstanding bonds as contemplated in 17-5-402 and 17-5-407. The authority contained in this section is in addition to any other authorization to the board to issue long-range building program bonds.

History: En. Sec. 5, Ch. 276, L. 1965; amd. Sec. 4, Ch. 318, L. 1967; amd. Sec. 2, Ch. 146, L. 1969; amd. Sec. 3, Ch. 222, L. 1971; amd. Sec. 5, Ch. 510, L. 1973; R.C.M. 1947, 79-2205; amd. Sec. 1, Ch. 644, L. 1979; amd. Sec. 1, Ch. 604, L. 1981.

17-5-411. Agreement with department. If the proceeds of any bonds issued pursuant to 17-5-410 are appropriated for the purpose of constructing a workers' compensation building in Helena, the board of examiners and department shall enter into an agreement pursuant to which the department shall agree to pay the state treasurer for deposit in the debt service account established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on those bonds from which the appropriation was made and to accumulate and maintain the required reserve attributable to those bonds. The agreement shall provide that, to the extent not required for costs of completing the building, the income from investment of the bond proceeds prior to expenditure and from investment of the reserve shall be credited against the department's payment obligation. The agreement shall allow for accumulation of the reserve during the first year the bonds are outstanding. The payments under the agreement shall be made from revenues and moneys of the department available therefor.

History: En. Sec. 2, Ch. 604, L. 1981; amd. Sec. 8, Ch. 298, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

17-5-412. Agreement with department of labor. If the proceeds of any bonds issued pursuant to 17-5-410 are appropriated for the purpose of constructing employment service buildings, the board of examiners and department of labor and industry shall enter into an agreement pursuant to which the department shall agree to pay the state treasurer for deposit in the debt service account established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on those bonds from which the appropriation was made and to accumulate and maintain the required reserve attributable to those bonds. The agreement shall provide that, to the extent not required for costs of completing the buildings, income from investment of the bond proceeds prior to expenditure and from investment of the reserve shall be credited against the department's payment obligation. The agreement shall allow for accumulation of the reserve during the first year the bonds are outstanding. The payments under the agreement shall be made from revenues and moneys of the department available therefor.

History: **En. Sec. 3, Ch. 604, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 298, L. 1983.**

17-5-413. Agreements for benefit of state. The agreements to be made pursuant to 17-5-411 and 17-5-412 are solely for the benefit of the state and are not enforceable by the holders of the bonds.

History: **En. Sec. 4, Ch. 604, L. 1981.**

17-5-414. Authorization of bonds. The board of examiners is authorized to issue and sell long-range building program bonds in an amount not exceeding $39,334,695, over and above the amount of long-range building program bonds outstanding January 1, 1983, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The board of examiners is also authorized to refund such bonds in accordance with Title 17, chapter 5, part 3, if it is deemed that such refunding would be in the best interest of the state. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell long-range building program bonds or refunding bonds.

History: **En. Sec. 1, Ch. 643, L. 1983; amd. Sec. 5, Ch. 643, L. 1983.**

17-5-415. Authorization for refunding bonds. The board of examiners is authorized to issue and sell refunding bonds in an amount necessary to refund any or all long-range building program bonds heretofore issued under Title 17, chapter 5, part 8. The refunding bonds are to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 3. The refunding bonds shall be general obligations secured by a pledge of the full faith and credit and taxing powers of the state. Any money which may be released from the debt service account provided for in 17-5-405 as a result of the issuance of refunding bonds shall revert to the fund of origin to the extent not required to provide for the debt service on the refunded bonds. Money required for payment of debt service on the refunded bonds may be held in trust in a special escrow account at a bank or trust company for the benefit of the refunded bonds.

History: **En. Sec. 2, Ch. 643, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 5, Ch. 643, L. 1983.**

17-5-416. Agreement with the department of fish, wildlife, and parks. If the proceeds of any bonds or notes issued pursuant to Title 17, chapter 5, part 8, are appropriated for the construction or renovation of fish hatcheries or regional headquarters facilities of the department of fish, wildlife, and parks, the board of examiners and the department of fish, wildlife, and parks may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves required under such bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for construction or renovation costs must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payments by the department must be made from funds available therefor.

History: En. Sec. 3, Ch. 643, L. 1983; amd. Sec. 5, Ch. 643, L. 1983.

17-5-417. Benefit of state. The agreement made pursuant to 17-5-416 is solely for the benefit of the state of Montana and is not enforceable by bondholders or other third-party beneficiaries.

History: En. Sec. 4, Ch. 643, L. 1983.

17-5-418 through 17-5-420 reserved.

17-5-421. Bonds for Montana college of mineral science and technology. (1) The board of examiners is authorized to issue and sell long-range building program bonds upon the conditions and in the manner stated in this part, in an amount not exceeding $2,275,000, over and above the amount of the long-range building program bonds outstanding on January 1, 1977, for the purpose of paying costs of acquiring, constructing, and equipping a physical education facility for and to be located at Montana college of mineral science and technology. The issuance and sale of the bonds shall be subject to an undertaking by the board of regents to pay to the state treasurer for deposit in the debt service account established pursuant to 17-5-405, from the sources hereinafter defined, amounts sufficient to pay as due the principal of and interest on the bonds; provided, however, this undertaking shall be enforceable only by the state treasurer and shall not be enforceable by the holders of such bonds. The payments by the board of regents shall be made from available revenues derived from resident and nonresident student building fees charged to students enrolled at Montana college of mineral science and technology, interest and income from lands granted by the United States of America to the state pursuant to 25 Stat. 676 for the establishment and maintenance of the college and the operation of the physical education facility, and other revenue producing residence and student union facilities at the college, subject to the prior pledge and appropriation of such revenues to the payment of other obligations of the board of regents.

(2) The proceeds of the bonds authorized by subsection (1) of this section shall be deposited in the capital projects fund created by 17-5-401.

History: En. Sec. 1, Ch. 507, L. 1977; R.C.M. 1947, 78-1401(part); amd. Sec. 10, Ch. 298, L. 1983.

17-5-422. Terminated. Sec. 1, Ch. 33, Sp. L. June 1986.

History: En. Secs. 1, 2, Ch. 600, L. 1981; amd. Sec. 11, Ch. 298, L. 1983; amd. Sec. 1, Ch. 33, Sp. L. June 1986.

17-5-423. Authorization of bonds for 1985 authorized projects. The board of examiners is authorized to issue and sell long-range building program general obligation bonds in an amount not exceeding $5,450,000 for the projects described in section 5 of House Bill No. 861, Laws of 1985; $1,700,000 for purposes described in Chapter 676, Laws of 1985; and $1,400,000 for the construction of the swimming pool addition to the physical education facility at western Montana college of the university of Montana over and above the amount of long-range building program bonds outstanding on January 1, 1985, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell long-range building program general obligation bonds.

History: En. Sec. 8, HB 861, L. 1985; amd. Sec. 5, Ch. 224, L. 1989.

17-5-424. 1985 bonds — agreement with the department of fish, wildlife, and parks. For the proceeds of bonds or notes authorized and appropriated by House Bill No. 861, Laws of 1985, for the construction or renovation of fish hatcheries operated by the department of fish, wildlife, and parks, the board of examiners and the department of fish, wildlife, and parks may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves required under such bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for construction or renovation costs must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payments by the department must be made from funds available therefor.

History: En. Sec. 9, HB 861, L. 1985.

17-5-425. 1985 bonds — agreement with the board of regents. For the proceeds of bonds or notes authorized and appropriated by House Bill No. 861, Laws of 1985, for the construction of the swimming facility at western Montana college of the university of Montana, the board of examiners and the board of regents may enter into an agreement under the terms of which the regents shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves required under such bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for construction or renovation costs must be credited against the regents' payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payments by the regents must be made from available funds.

History: En. Sec. 10, HB 861, L. 1985; amd. Sec. 5, Ch. 224, L. 1989.

Cross-References

Miscellaneous finances — University System, Title 20, ch. 25, part 4.

17-5-426. 1985 bonds — agreements for benefit of state. The agreements made pursuant to 17-5-424 and 17-5-425 are solely for the benefit of the state of Montana and are not enforceable by bondholders or other third-party beneficiaries.

History: En. Sec. 11, HB 861, L. 1985.

17-5-427 through 17-5-429 reserved.

17-5-430. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding $6,460,000 for the projects described in section 9, Chapter 624, Laws of 1993, over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1993, to be used in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds. The board may fund the department of corrections and human services projects authorized in section 9, Chapter 624, Laws of 1993, through the use of loans or bonds.

History: En. Sec. 10, Ch. 624, L. 1993.

Compiler's Comments

Effective Date: Section 29, Ch. 624, L. 1993, provided: "[This act] is effective on passage and approval." Approved May 10, 1993.

17-5-431. Agreement with department of labor and industry. For the proceeds of bonds and notes authorized and appropriated by Chapter 624, Laws of 1993, for the expansion and renovation of job service offices, statewide, the board of examiners and the department of labor and industry may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds and notes from which the appropriation was made and to accommodate and maintain reserves required under the bonds. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the reserves not required for construction or renovation costs may be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payment by the department must be made from funds available therefor.

History: En. Sec. 11, Ch. 624, L. 1993.

Compiler's Comments

Effective Date: Section 29, Ch. 624, L. 1993, provided: "[This act] is effective on passage and approval." Approved May 10, 1993.

Ancillary Provision for Bond Payment: Section 14, Ch. 624, L. 1993, provided: "The department of labor and industry shall transfer to the department of administration, prior to the payment date, sufficient funds to retire $1,500,000 of general obligation long-range building program bonds authorized by the 53rd legislature and issued by the board of examiners. This payment obligation is for the benefit of the state and not enforceable by bondholders."

17-5-432. Agreement with department of social and rehabilitation services. For the proceeds of bonds and notes authorized and appropriated by Chapter 624, Laws of 1993, for the construction of a commodities warehouse, the board of examiners and the department of social and rehabilitation services may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds and notes from which the appropriation was made and to accommodate and maintain reserves required under the bonds. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the reserves not required for construction costs may be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payment by the department must be made from funds available therefor.

History: En. Sec. 12, Ch. 624, L. 1993.

Compiler's Comments

Effective Date: Section 29, Ch. 624, L. 1993, provided: "[This act] is effective on passage and approval." Approved May 10, 1993.

Ancillary Provision for Bond Payment: Section 15, Ch. 624, L. 1993, provided: "The department of social and rehabilitation services shall transfer to the department of administration, prior to the payment date, sufficient funds to retire $1,700,000 of general obligation long-range building program bonds authorized by the 53rd legislature and issued by the board of examiners. This payment obligation is for the benefit of the state and not enforceable by bondholders."

17-5-433. Benefit to state. The agreements made pursuant to 17-5-431 and 17-5-432 are solely for the benefit of the state and are not enforceable by bondholders or other third-party beneficiaries.

History: En. Sec. 13, Ch. 624, L. 1993.

Compiler's Comments

Effective Date: Section 29, Ch. 624, L. 1993, provided: "[This act] is effective on passage and approval." Approved May 10, 1993.

Part 5

General Obligation Highway Bonds

Part Cross-References

Establishing reserve for highway bonds, 60-3-201.

17-5-501. Authority for general obligation highway bonds. The board of examiners is authorized to issue and sell general obligation highway bonds of the state for the purpose of acquiring a suitable site for and erecting and equipping a department of transportation headquarters building and complex at or near Helena, Montana, to replace the present laboratory and administration buildings which are declared to be inadequate for such purpose. The full faith and credit and taxing powers of the state shall be pledged for the payment of all bonds issued pursuant to this part.

History: En. Sec. 1, Ch. 477, L. 1975; amd. Sec. 3, Ch. 512, L. 1991.

17-5-502. Site acquisition and construction authorized. Upon the sale of the bonds, the department of administration, acting under the supervision and with the approval of the board of examiners, is empowered and directed to acquire the site for and to proceed with the erection and equipping of a building of suitable construction and design for use as a headquarters building and necessary supporting structures for laboratories and storage for the Montana department of transportation.

History: **En. Sec. 2, Ch. 477, L. 1975; amd. Sec. 3, Ch. 512, L. 1991.**

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

17-5-503. Amount authorized and reservation of future authorizations — payment. The aggregate amount of highway bonds authorized by this part for the purpose expressed in 17-5-501 shall not exceed the sum of $7,400,000. The state reserves the privilege of issuing additional highway bonds, when and if authorized by law, for this purpose and for any other purpose for which money derived from the sources described in Article VIII, section 6, of the constitution is authorized by that section to be expended. The board of examiners is also authorized to issue additional highway bonds for the purpose of refunding bonds issued pursuant to or as contemplated in this chapter, in amounts not exceeding the principal amount of the bonds refunded, when the board determines that the refunding of any outstanding bonds is in the best interests of the state. All bonds issued for the purposes contemplated in this section shall be payable from the same debt service account on a parity as to both principal and interest with the bonds authorized in 17-5-501, provided that in the issuance of each series of such bonds the amount, maturities, and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year on such bonds then outstanding (except bonds refunded) and on the series so to be issued will not exceed 25% of the amount collected during the then next preceding fiscal year from the tax or taxes pledged by law to the debt service account at the time of such issuance. The provisions of this section shall not constitute a covenant with the holders of any bonds issued hereunder.

History: **En. Sec. 3, Ch. 477, L. 1975; amd. Sec. 12, Ch. 298, L. 1983.**

17-5-504. Forms, interest, and maturity. Such bonds shall be issued by the board, upon request of the department of administration, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest, maturing at such times not exceeding 20 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agent of the state, as the board shall determine, subject to the limitations contained herein.

History: **En. Sec. 4, Ch. 477, L. 1975.**

17-5-505. Board of examiners to prescribe form and employ fiscal agent. In all other respects, the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. The board is authorized to employ a fiscal agent to assist it in the performance of its duties hereunder. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of the state. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

History: En. Sec. 5, Ch. 477, L. 1975.

Cross-References

Facsimile signatures and seals, 2-16-114.

17-5-506. Deposit and use of proceeds. All proceeds of bonds issued hereunder shall be deposited in a separate highway capital projects fund which is created within the capital projects fund type established by 17-2-102, referred to herein as the "highway capital projects fund", and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury. The proceeds of the bonds authorized in 17-5-501 shall be used only to pay costs of acquiring land for and erecting and equipping the buildings herein referred to, upon order of the department of administration acting within the limits of the authority conferred upon it by the legislature and said proceeds are appropriated for the purpose of the capital items herein described. The proceeds of any additional bonds authorized as contemplated in 17-5-503, except refunding bonds, shall be used only for purposes authorized under the provisions of Article VIII, section 6, of the constitution, upon order of the department acting within the limits of the authority conferred upon it by the legislature.

History: En. Sec. 6, Ch. 477, L. 1975; amd. Sec. 13, Ch. 298, L. 1983.

Cross-References

Use of clearance fund, 17-5-404.

17-5-507. State pledge of gasoline tax — use. (1) The state pledges and appropriates and directs to be credited as received to the debt service account, as herein defined, that portion of the net proceeds from the collection of gasoline taxes which may from time to time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received as net proceeds from the collection of gasoline taxation. The term "net proceeds", as used herein, means all funds on hand in the treasury of the state as of any date, derived from the collection of the license tax imposed on gasoline distributors by 15-70-204, enacted by section 3, Chapter 369, Laws of 1969, as amended by section 1, Chapter 202, and by section 2, Chapter 204, Laws of 1971, and by section 90, Chapter 516, Laws of 1973, or by any subsequent enactment, less the amount of all refunds of such taxes for which applications have been made pursuant to law but which have not yet been paid or rejected. The term "debt service account", as used herein, means a separate highway fund which is created within the debt service fund type established by 17-2-102 and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest thereon when due, so long as any such bonds or interest remain unpaid.

(2) Money in the debt service account shall be used: first, to pay interest and principal when due on highway bonds; second, to accumulate a reserve in the amount required below, for the further security of such payments; and third, to maintain this reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal

which will become due on all such bonds which are then outstanding in any subsequent fiscal year.

(3) Money at any time received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection (2) shall be transferred by the treasurer to the state special revenue fund, highway account. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection (2), the treasurer shall credit to said account an amount sufficient to restore said balance from the next receipts of net proceeds from the collection of gasoline taxes.

History: En. Sec. 7, Ch. 477, L. 1975; amd. Sec. 14, Ch. 298, L. 1983.

Cross-References

Distribution and use of proceeds of gasoline dealers' license tax, 60-3-201.

Part 6

Employment Security Building Bonds

Part Cross-References

Agreement between Division and Board of Examiners, 17-5-412.

17-5-601. Bond issue for employment security building addition on capitol grounds. The board of examiners is hereby authorized to issue and sell bonds for the purpose of constructing an addition to the employment security commission office building presently existing on the capitol building grounds adjacent to the capitol building, namely on lots 9 through 24, inclusive, in block 20 of the Corbin addition to the city of Helena, county of Lewis and Clark, Helena, Montana, and for the purpose of landscaping and paving around said building.

History: En. Sec. 1, Ch. 418, L. 1971; R.C.M. 1947, 78-1011.

17-5-602. Architect and construction and design. Upon the sale of the bonds, the board of examiners is hereby empowered and directed to employ an architect to prepare plans and specifications and to proceed with the constructing of an addition to the presently existing employment security commission building on the state capitol grounds, said addition to be used as office facilities by the employment security commission within the limitations prescribed by the United States department of labor, manpower administration, and the United States secretary of labor.

History: En. Sec. 2, Ch. 418, L. 1971; R.C.M. 1947, 78-1012.

17-5-603. Bids and contractor's bond. The board of examiners shall call for bids for the construction of and for the landscaping and paving around said addition to the employment security building and let contracts for the same, all in accordance with the laws of Montana. Said board shall require the contractor to give bond to the state in such amount as the board may determine, conditioned for the faithful performance of his duties and contract.

History: En. Sec. 3, Ch. 418, L. 1971; R.C.M. 1947, 78-1013.

Cross-References

Construction contracts, Title 18, ch. 2.

17-5-604. Amount of bonds authorized. The aggregate amount of bonds authorized by 17-5-601 through 17-5-610 for the purpose of herein expressed shall not exceed the sum of $499,000.

History: En. Sec. 4, Ch. 418, L. 1971; R.C.M. 1947, 78-1014.

17-5-605. Interest rate, form, and other provisions of bonds. Bonds issued and sold by the board of examiners under authority of 17-5-601 through 17-5-610 shall bear interest at the current and prevailing interest rate, said interest to be payable semiannually. They shall be either amortization or serial bonds, shall bear such date as the board of examiners shall prescribe, and shall be payable over such period of years, not exceeding 20, as said board may specify. All bonds shall be optional and redeemable 5 years after the date of issue and on any interest payment date thereafter, at the option of the board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 418, L. 1971; R.C.M. 1947, 78-1015.

17-5-606. Sale of bonds and registration. Said bonds shall be sold by the board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of 17-5-601 through 17-5-610; provided that none of such bonds shall be sold for less than par plus accrued interest to the date of delivery of the bonds. Before delivery, each of said bonds shall be registered with the state treasurer, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 418, L. 1971; R.C.M. 1947, 78-1016.

17-5-607. Payment of principal and interest. (1) The principal and interest of the bonds authorized by 17-5-601 through 17-5-610 shall be payable out of the following funds and from them only:

(a) all money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended; and

(b) all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana.

(2) Immediately following use of said addition to said building upon completion of erection, pursuant to Title III of the Social Security Act, as amended, the money shall be and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by 17-5-601 through 17-5-610 to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of $499,000.

History: En. Sec. 7, Ch. 418, L. 1971; R.C.M. 1947, 78-1017.

17-5-608. Employment security building account. To provide for the payment of the interest and principal of the bonds authorized by 17-5-601 through 17-5-610, there is created an employment security commission building account within a debt service fund in the state treasury. All sums of money dedicated and appropriated to the payment of the principal and interest of the bonds and the erection of the addition to the employment security building, including the landscaping and paving around it, shall be paid into that account.

History: En. Sec. 8, Ch. 418, L. 1971; amd. Sec. 1, Ch. 61, L. 1977; R.C.M. 1947, 78-1018; amd. Sec. 15, Ch. 298, L. 1983.

17-5-609. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-601 through 17-5-610 with moneys from the investment funds.

History: En. Sec. 9, Ch. 418, L. 1971; amd. Sec. 2, Ch. 61, L. 1977; R.C.M. 1947, 78-1019; amd. Sec. 1, Ch. 418, L. 1985.

17-5-610. Budget Act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the Budget Act.

History: En. Sec. 10, Ch. 418, L. 1971; R.C.M. 1947, 78-1020.

Cross-References

Budgeting, Title 17, ch. 7.

17-5-611. Bond issue for employment security buildings throughout state. The board of examiners is hereby authorized to issue and sell bonds for the purpose of purchasing land, landscaping, and paving said land as is necessary and for the purpose of erecting employment security commission office buildings in the following locations:

(1) employment security commission (employment service building), Great Falls, Montana;

(2) employment security commission (employment service building), addition, Billings, Montana;

(3) employment security commission (employment service building), Missoula, Montana;

(4) employment security commission (employment service building), Helena, Montana.

History: En. Sec. 1, Ch. 419, L. 1971; R.C.M. 1947, 78-1021.

17-5-612. Architect and construction and design. Upon the sale of the bonds, the board of examiners is hereby empowered and directed to employ architects to prepare plans and specifications and to proceed with the erection of buildings of suitable construction and design for use as employment security commission buildings within the limitations prescribed by the United States department of labor, manpower administration, and the United States secretary of labor.

History: En. Sec. 2, Ch. 419, L. 1971; R.C.M. 1947, 78-1022.

Cross-References

Policy regarding practice of architecture — preparation of working drawings by department limited, 18-2-111.

Appointment of architects and consulting engineers, 18-2-112.

Architects on public buildings to be certified, 18-2-113.

Seal and signature of architect on plans, 18-2-114.

17-5-613. Bids and contractor's bond. The board of examiners shall call for bids for the construction of said buildings and for the landscaping and paving around them and let contracts for the same, all in accordance with the laws of Montana. Said board shall require each prime contractor to give bond to the state in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

History: En. Sec. 3, Ch. 419, L. 1971; R.C.M. 1947, 78-1023.

Cross-References

Performance, labor, and materials bonds, Title 18, ch. 2, part 2.

17-5-614. Amount of bonds authorized. The aggregate amount of bonds authorized by 17-5-611 through 17-5-620 for the purpose herein expressed shall not exceed the sum of $1,055,928.

History: En. Sec. 4, Ch. 419, L. 1971; R.C.M. 1947, 78-1024.

17-5-615. Interest rate, term, and other provisions of bonds. Bonds issued and sold by the board of examiners under authority of 17-5-611 through 17-5-620 shall bear interest at the prevailing rate payable annually. They shall be either amortization or serial bonds, shall bear such date as the board of examiners shall prescribe, and shall be payable over such period of years, not exceeding 20, as said board may specify. All bonds shall be optional and redeemable 5 years after the date of issue and on any interest payment date thereafter at the option of the board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer.

History: En. Sec. 5, Ch. 419, L. 1971; R.C.M. 1947, 78-1025.

17-5-616. Sale of bonds and registration. Said bonds shall be sold by the board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of 17-5-611 through 17-5-620; provided that none of such bonds shall be sold for less than par plus accrued interest to the date of delivery of the bonds. Before delivery, each of said bonds shall be registered with the state treasurer, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 419, L. 1971; R.C.M. 1947, 78-1026.

17-5-617. Payment of principal and interest. (1) The principal and interest of the bonds authorized by 17-5-611 through 17-5-620 shall be payable out of the following funds and from them only:

(a) all money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended; and

(b) all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana.

(2) Immediately following occupancy of said buildings upon completion of erection, pursuant to Title III of the Social Security Act, as amended, the money shall be and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided

for by 17-5-611 through 17-5-620 to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of $1,055,928.

History: En. Sec. 7, Ch. 419, L. 1971; R.C.M. 1947, 78-1027.

17-5-618. Employment security building account. To provide for the payment of the interest and principal of the bonds authorized by 17-5-611 through 17-5-620, there is created an employment security commission building account within the debt service fund type in the state treasury. All sums of money dedicated and appropriated to the payment of the principal and interest of the bonds and the erection of the buildings, including the landscaping and paving around them, shall be paid into that account.

History: En. Sec. 8, Ch. 419, L. 1971; amd. Sec. 3, Ch. 61, L. 1977; R.C.M. 1947, 78-1028; amd. Sec. 16, Ch. 298, L. 1983.

Cross-References

Fund structure, 17-2-102.

Maintenance of fund and account records and interfund loans, 17-2-105.

17-5-619. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-611 through 17-5-620 with moneys from the investment funds.

History: En. Sec. 9, Ch. 419, L. 1971; amd. Sec. 4, Ch. 61, L. 1977; R.C.M. 1947, 78-1029; amd. Sec. 2, Ch. 418, L. 1985.

17-5-620. Budget Act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the Budget Act.

History: En. Sec. 10, Ch. 419, L. 1971; R.C.M. 1947, 78-1030.

Cross-References

Budgeting, Title 17, ch. 7.

Part 7

Coal Severance Tax Bonds — Water Development

Part Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.

Protection and improvement, Art. IX, sec. 1, Mont. Const.

Severance tax on coal — trust fund, Art. IX, sec. 5, Mont. Const.

Coal severance tax — general provisions, Title 15, ch. 35, part 1.

Water resources — administration, Title 85, ch. 1, part 2.

Renewable resource development program, Title 85, ch. 1, part 6.

Dams and reservoirs, Title 85, ch. 15.

Coal impacts — general provisions, Title 90, ch. 6, part 2.

17-5-701. State of Montana coal severance tax bonds. This part provides for the issuance of state of Montana coal severance tax bonds (also referred to as coal severance tax bonds in this part) to:

(1) finance renewable resource projects in the state designed to provide, during and after extensive coal mining, a healthy economy, the alleviation of social and economic impacts created by coal development, and a clean and healthful environment for present and future generations; and

(2) finance loans to local governments for infrastructure projects under Title 90, chapter 6, part 7.

History: En. Sec. 24, Ch. 505, L. 1981; amd. Sec. 3, Ch. 3, Sp. L. January 1992; amd. Sec. 5, Ch. 478, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 478 at beginning of (1) substituted "finance renewable resource projects" for "finance water resource development projects and activities". Amendment effective July 1, 1993.

17-5-702. Purpose and intent. (1) The purpose of the coal severance tax trust fund bond provisions of this part is to establish the authority to issue and sell coal severance tax bonds that have been approved by act of the legislature for financing specific renewable resource projects in the state authorized by the legislature and to guarantee redemption of the bonds by revenue derived from the receipts from the coal severance tax imposed by Title 15, chapter 35, part 1, and such other money as the legislature may from time to time determine.

(2) The legislature intends that projects to be financed by coal severance tax bonds include renewable resource projects as part of the program established in Title 85, chapter 1, part 6. The legislature further intends that the income from renewable resource projects in excess of the amount required for debt service and operation and maintenance of those projects and activities be deposited in the renewable resource grant and loan program state special revenue account established in 85-1-604.

History: En. Sec. 25, Ch. 505, L. 1981; amd. Sec. 17, Ch. 298, L. 1983; amd. Sec. 6, Ch. 478, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 478 near middle of (1), after "specific", substituted "renewable resource projects" for "water resource development projects and activities"; in first sentence of (2), after "include", substituted "renewable resource projects" for "water resource development projects and activities" and before "program" deleted "water development" and near beginning of second sentence substituted "renewable resource projects" for "water resource development projects and activities" and before "state" substituted "renewable resource grant and loan program" for "water development"; and made minor changes in style. Amendment effective July 1, 1993.

17-5-703. Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution shall be composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax shall be deposited;

(b) a treasure state endowment fund;

(c) a clean coal technology demonstration fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a coal severance tax school bond contingency loan fund.

(2) The state treasurer shall determine the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund on the next two ensuing semiannual payment dates and retain that amount in the coal severance tax bond fund.

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond

contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) Beginning July 1, 1991, and ending June 30, 1997, from any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of any amount that is required to be transferred by subsection (3), the department of revenue shall, upon request from the department of natural resources and conservation, transfer an amount up to $5 million per fiscal year to the clean coal technology demonstration fund.

(5) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall transfer to the treasure state endowment fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsections (3) and (4).

(6) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall from time to time transfer to the coal severance tax permanent fund 50% of the principal transferred from the coal severance tax bond fund to the treasure state endowment fund in the preceding year.

(b) The state treasurer shall annually transfer to the treasure state endowment special revenue account the amount of interest earnings required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Interest earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

History: En. Sec. 26, Ch. 505, L. 1981; amd. Sec. 18, Ch. 298, L. 1983; amd. Sec. 2, Ch. 512, L. 1985; amd. Sec. 3, Ch. 722, L. 1991; amd. Secs. 3, 7, Ch. 12, Sp. L. January 1992; amd. Sec. 4, Ch. 515, L. 1993.

Compiler's Comments

Loan Authorization — Appropriation of Loan Proceeds: Section 3, Ch. 354, L. 1993, provided: "In addition to the litigation listed in [sections 1 and 2] [not codified, see 1993 Session Laws], loan proceeds are authorized for the purpose of conducting any other natural resource damage assessment, litigation, or administration as provided by Title 75, chapter 10, part 7."

Loan Contract: Section 5, Ch. 354, L. 1993, provided: "In order to make the loans authorized in [sections 1 and 2] [not codified, see 1993 Session Laws], the board of investments shall enter into an irrevocable contract with the department of health and environmental sciences pledging the amount recovered in the litigation to the repayment of the loans. The contract must provide that loan repayments must be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loans from the portion of the coal severance tax permanent fund invested in the short-term investment pool. The loans authorized in [sections 1 and 2] [not codified, see 1993 Session Laws] may not be made until the contract required by this section has been entered into by the board and the department."

1993 Amendment: Chapter 515 in (4), near end, substituted "department of revenue shall, upon request from the department of natural resources and conservation" for "state treasurer shall from time to time" and after "amount" substituted "up to" for "not exceeding". Amendment effective April 24, 1993.

17-5-704. Investment of funds. Money in the coal severance tax bond fund, the coal severance tax permanent fund, the coal severance tax income fund, and the coal severance tax school bond contingency loan fund must be invested in accordance with the investment standards for coal severance tax funds. Income and earnings from all funds are statutorily appropriated, as provided in 17-7-502, as follows:

(1) 15% to the state equalization aid account; and

(2) 85% to the state general fund.

History: En. Sec. 27, Ch. 505, L. 1981; amd. Sec. 1, Ch. 149, L. 1983; amd. Sec. 19, Ch. 298, L. 1983; amd. Sec. 2, Ch. 662, L. 1987; amd. Sec. 23, Ch. 83, L. 1989; amd. Sec. 3, Ch. 634, L. 1989; amd. Sec. 92, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 787, L. 1991; amd. Sec. 4, Ch. 12, Sp. L. January 1992.

17-5-705. Pledge of coal severance tax bond fund. The money in the coal severance tax bond fund is pledged to the payment of the principal and interest on all state of Montana coal severance tax bonds. All bonds issued after July 1, 1981, wherein the money in the coal severance tax bond fund is pledged for their retirement shall be called "state of Montana coal severance tax bonds".

History: En. Sec. 28, Ch. 505, L. 1981; amd. Sec. 20, Ch. 298, L. 1983.

17-5-706. Authority to issue coal severance tax bonds. The board of examiners, upon approval of the legislature as hereinafter provided, shall issue and sell coal severance tax bonds to finance approved renewable resource projects when authorized to do so by any law that sets out the amount and purpose of the issue. Each project must be separately approved as to amount by a two-thirds vote of each house of the legislature.

History: En. Sec. 29, Ch. 505, L. 1981; amd. Sec. 7, Ch. 478, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 478 in first sentence substituted "renewable resource projects" for "water resource development projects and activities" and in second sentence, after "project", deleted "or activity"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Bond anticipation notes authorized, 17-5-731.

The Montana Unified Volume Cap Bond Allocation Plan Act, Title 17, ch. 5, part 13.

17-5-707. Board of examiners to issue bonds. The board of examiners may issue and sell coal severance tax bonds, and no other agency of the state is so authorized. Any action taken by the board of examiners under this part must be approved by a majority vote of its members.

History: En. Sec. 30, Ch. 505, L. 1981.

17-5-708. Special fund revenues. (1) If a law authorizing a coal severance tax bond issue for a specific purpose and in a specific amount contemplates the pledge and receipt of revenues, assets, or money other than or in addition to the money in the coal severance tax bond fund, then the money derived from such pledged revenues, assets, and money must be paid into a special bond fund for the benefit of such bonds, which must be part of a debt service fund of the state treasury fund structure.

(2) Money must be withdrawn from the coal severance tax bond fund and paid to the special bond fund as necessary to provide for payment of principal and interest on the coal severance tax bonds secured by a pledge of the special bond fund.

History: En. Sec. 31, Ch. 505, L. 1981; amd. Sec. 21, Ch. 298, L. 1983.

Cross-References

Fund structure, 17-2-102.

17-5-709. Continued tax deposit limit on additional bonds. (1) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal severance tax bond fund of the coal severance tax which, together with such other revenues, assets, and money as may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds.

(2) The board of examiners may issue no coal severance tax bonds unless the aggregate amount of coal severance tax bonds outstanding, including the proposed issue and any other coal severance tax bonds authorized but not yet issued, can be serviced with no more than two-thirds of the annual deposits into the coal severance tax bond fund, as determined by the average of the deposits during the preceding 3 fiscal years, together with the average of the aggregate amount of revenues, assets, or money deposited in one or more special bond funds used to pay debt service on outstanding coal severance tax bonds during the preceding 3 fiscal years.

(3) The provisions of this section may not be modified so as to reduce the security for any coal severance tax bonds while such bonds are outstanding.

History: En. Sec. 32, Ch. 505, L. 1981; amd. Sec. 22, Ch. 298, L. 1983.

17-5-710. Form — principal and interest — fiscal agent — deposit of proceeds. (1) Each series of coal severance tax bonds must be issued by the board of examiners at public or private sale, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at such rate or rates, maturing at such times not exceeding 40 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state as the board of examiners shall determine, subject to the limitations contained in this part.

(2) In all other respects the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Coal severance tax bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board of examiners is authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

(5) All proceeds of a state of Montana coal severance tax bonds issue shall be deposited in a capital projects fund or a state special revenue account established for that bond issue, except that any premiums and accrued

interest received shall be deposited in a debt service fund established for that bond issue.

History: En. Sec. 33, Ch. 505, L. 1981; amd. Sec. 23, Ch. 298, L. 1983.

Cross-References

Facsimile signatures and seals, 2-16-114.

Fund structure, 17-2-102.

17-5-711. Trust indenture. In the discretion of the board of examiners, a series of bonds or notes issued under this part may be secured by a trust indenture by and between the board of examiners and a trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart thereof shall be filed in the office of the secretary of state of Montana. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary.

History: En. Sec. 34, Ch. 505, L. 1981; amd. Sec. 3, Ch. 512, L. 1985.

Cross-References

Duties of Secretary of State, 2-15-401.

Role and duties of county clerk, 7-4-2611.

Procedure to record documents, 7-4-2617.

Trust company defined — purposes for which may be formed, 32-1-107.

17-5-712. Provisions for protecting bondholders. Either the legislative act providing for the issuance of coal severance tax bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state, the board of examiners, and the departments, boards, or agencies of state government in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the projects financed with the proceeds of coal severance tax bonds and the custody, safeguarding, and application of all money. The trust indenture may set forth the rights and remedies of the bondholders as is customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. No enumeration of particular powers granted by this section impairs any general grant of power contained in this part.

History: En. Sec. 35, Ch. 505, L. 1981.

17-5-713. Personal liability — suit to compel performance. (1) The members of the board of examiners and officers and employees of the departments, boards, or agencies of state government are not personally liable or accountable by reason of the issuance of or on any coal severance tax bond or bond anticipation note issued by the board of examiners.

(2) Any holder of coal severance tax bonds or any person or officer being a party in interest, subject to any applicable coal severance tax agreements or trust indentures, may sue to enforce and compel the performance of the coal severance tax bond provisions as set out in this part.

History: En. Sec. 36, Ch. 505, L. 1981; amd. Sec. 4, Ch. 512, L. 1985.

Cross-References

Bonds of state officers and employees, Title 2, ch. 9, part 6.

Bond anticipation notes authorized, 17-5-731.

17-5-714. Negotiability of bonds. Bonds or notes issued under this part are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

History: En. Sec. 37, Ch. 505, L. 1981; amd. Sec. 5, Ch. 512, L. 1985.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

17-5-715. Signatures of board members. In case any member of the board of examiners whose signature appears on bonds, notes, or coupons issued under this part ceases to be a member before the delivery of the bonds or notes, his signature is nevertheless valid and sufficient for all purposes, the same as if the member had remained in office until delivery.

History: En. Sec. 38, Ch. 505, L. 1981; amd. Sec. 6, Ch. 512, L. 1985.

17-5-716. Refunding obligations. (1) The state board of examiners may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of refunding obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the state are governed by the appropriate provisions of this part that relate to the issuance of obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under this part. The proceeds may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

History: En. Sec. 39, Ch. 505, L. 1981.

Cross-References

Crossover refunding bonds, Title 17, ch. 5, part 21.

17-5-717. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of notes and bonds issued by the state.

History: En. Sec. 40, Ch. 505, L. 1981.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

17-5-718. Tax exemption of bonds — legal investments. (1) All bonds or notes issued under this part, their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivisions or other instrumentality of the state, excepting inheritance, estate, and gift taxes.

(2) Bonds or notes issued under this part are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money.

History: En. Sec. 41, Ch. 505, L. 1981; amd. Sec. 7, Ch. 512, L. 1985.

Cross-References

Investments, Title 17, ch. 6, part 2.

17-5-719. Limitation on amount of coal severance tax bonds issued. No more than $250 million worth of coal severance tax bonds may be issued for renewable resource development projects and activities.

History: En. Sec. 42, Ch. 505, L. 1981.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

17-5-720. Authorization to issue revenue bonds. (1) In addition to the authority contained in 17-5-716, the board of examiners may issue revenue bonds of the state to refund in whole or in part bonds issued to finance renewable resource development projects approved by the legislature pursuant to Title 17, chapter 5, part 7, and Title 85, chapter 1, part 6. The principal and interest on refunding bonds issued pursuant to this section are payable solely from the project or projects for which the refunded bonds were issued.

(2) The revenue bonds may be issued in an amount sufficient to refund all or a portion of the outstanding bonds, to pay costs incident to the issuance and sale of the refunding bonds, and to fund the establishment of necessary reserves. The refunding bonds must be designated as "State of Montana Water Development Revenue Bonds". All the power and authority granted to the board of examiners and provisions with respect to the issuance of bonds under Title 17, chapter 5, part 7, except for the provision pledging the coal severance tax to the payment of the bonds, apply to the issuance of the revenue bonds. In authorizing the issuance of the revenue bonds, the board of examiners shall determine that the refunding of the outstanding bonds and the issuance of the revenue bonds are in the best interest of the state.

(3) Revenue bonds may not be issued under this section to refund bonds issued to fund a loan to a political subdivision or local government body unless the political subdivision or local government body whose loan repayments would be pledged to the payment of the refunding bonds has consented to the refunding.

(4) Revenue bonds issued pursuant to this section without the pledge of the coal severance tax to the payment of the bonds are not coal severance tax bonds or a state debt.

History: En. Sec. 8, Ch. 775, L. 1991.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

17-5-721. Authorization to issue revenue bonds. (1) In addition to the authority contained in 17-5-716, the board of examiners may issue revenue bonds of the state to refund, in whole or in part, bonds issued to finance renewable resource projects approved by the legislature pursuant to Title 17, chapter 5, part 7, and Title 85, chapter 1, part 6. The principal and interest on refunding bonds issued pursuant to this section are payable solely from the project or projects for which the refunded bonds were issued.

(2) The revenue bonds may be issued in an amount sufficient to refund all or a portion of the outstanding bonds, to pay costs incident to the issuance and sale of the refunding bonds, and to fund the establishment of necessary reserves. The refunding bonds must be designated as "State of Montana Water Development Revenue Bonds". All the power and authority granted to the board of examiners and provisions with respect to the issuance of bonds under Title 17, chapter 5, part 7, except for the provision pledging the coal severance tax to the payment of the bonds, apply to the issuance of the revenue bonds. In authorizing the issuance of the revenue bonds, the board of examiners shall determine that the refunding of the outstanding bonds and the issuance of the revenue bonds are in the best interests of the state.

(3) Revenue bonds may not be issued under this section to refund bonds issued to fund a loan to a political subdivision or local government body unless the political subdivision or local government body whose loan repayments would be pledged to the payment of the refunding bonds has consented to the refunding.

(4) Revenue bonds issued pursuant to this section without the pledge of the coal severance tax to the payment of the bonds are not coal severance tax bonds or a state debt.

History: En. Sec. 9, Ch. 497, L. 1993.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

Effective Date: Section 13, Ch. 497, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 24, 1993.

17-5-722 through 17-5-730 reserved.

17-5-731. Bond anticipation notes — when issued — payment of principal and interest. (1) When the board of examiners has been authorized by the legislature to issue and sell bonds under this part, it may, pending the issuance of the bonds, issue temporary notes in anticipation of the receipt of proceeds to be derived from the sale of the bonds. The notes are designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes must be used only for the purposes for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued. As much of the proceeds of the bonds, when issued, must be credited to the note debt service fund as may be needed for payment of the notes, with interest, when due.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as needed. Notes must be authorized by the board of examiners and contain such terms and details as may be provided by resolution of the board. Each resolution of the board of examiners authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify:

(i) the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any time;

(ii) the rate or rates of interest, the maximum rate of interest, or the interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) of such notes; and

(iii) the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for notes to be issued and sold, in whole or in part, from time to time. The board may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as may be considered appropriate by the board or, if there has been such a delegation, the state treasurer. The board may, in its discretion but subject to the limitations contained in this section, also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either within or outside of the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless the board revokes such authority to refund; and

(d) such other terms and conditions as the board may consider appropriate.

(4) In connection with the issuance and sale of notes, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving them.

History: En. Sec. 8, Ch. 512, L. 1985.

Cross-References

Negotiability of bonds, 17-5-714.

Part 8

General Obligation Bonds and Notes

Part Cross-References

Long-range building program and budget, Title 17, ch. 7, part 2.

17-5-801. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Bond act" means an act approved by the vote of two-thirds of the members of each house of the legislature or by a majority of the electors voting thereon, authorizing the issuance of bonds for the purpose set forth therein and adopting this part by reference.

(3) "Bonds" means general obligation bonds, notes, or other evidences of indebtedness issued in accordance with the provisions of this part.

(4) "Capital projects account" means a separate general obligation bond and note account created within the capital projects fund type established in 17-2-102.

(5) "Costs" includes those expenses related to acquiring land; planning, design, and construction of capital projects and of buildings as defined in 18-2-101; or any other administrative expenses of the department, including legal fees, incurred in the performance of its duties under Title 18, chapter 2.

(6) "Debt service account" means a separate general obligation bond and note account created within the debt service fund type established in 17-2-102.

(7) "Department" means the department of administration created in 2-15-1001.

(8) "Treasurer" means the ex officio state treasurer, referred to in 2-15-1002.

History: En. Sec. 1, Ch. 184, L. 1983; amd. Sec. 3, Ch. 372, L. 1985.

17-5-802. Authority to issue general obligation bonds and notes. (1) When authorized by and within the limits of a bond act and as provided in this part, the board may issue and sell bonds of the state in such manner as it considers necessary and proper to provide funds for the purpose set forth in the bond act.

(2) The full faith and credit and taxing powers of the state must be pledged for the payment of all bonds and notes issued pursuant to this part, with all interest thereon and premiums payable upon the redemption thereof. All principal, interest, and redemption premium, if any, becoming due during a fiscal year must be included in the state budget for such year, and sufficient revenues must be appropriated for payment thereof from the general fund and, if the general fund is not sufficient, from any other funds of the state legally available for payment thereof. No bonds may be issued to cover deficits incurred because appropriations exceeded anticipated revenue. Money transferred for the payment of bonds and notes must be deposited in the debt service account.

(3) No additional long-range building bonds may be issued under Title 17, chapter 5, part 4.

History: En. Sec. 2, Ch. 184, L. 1983.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Balanced budget, Art. VIII, sec. 9, Mont. Const.

Use of loan proceeds, Art. VIII, sec. 11, Mont. Const.

17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds. (1) In furtherance of each bond act, bonds may be issued by the board upon request of the department in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at such rate or rates, maturing at such times not exceeding 30 years from date of issue, subject to redemption at such earlier times and prices and on such notice, and payable at the office of such fiscal agency of the state as the board shall determine, subject to the limitations contained in this part and in the bond act.

(2) In all other respects the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. Bonds and any interest coupons appurtenant thereto must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. Action taken by the board under this part must be by a majority vote of its members. The state treasurer shall keep a record of all such bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(4) The board is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available therefor in the general fund or from the proceeds of the bonds, in the discretion of the board.

(5) All proceeds of bonds and notes issued under this part must be deposited in the capital projects account, except that any premiums and accrued interest received and the proceeds of refunding bonds or notes must be deposited in the debt service account.

History: En. Sec. 3, Ch. 184, L. 1983.

Cross-References

Facsimile signatures and seals, 2-16-114.

Fund structure, 17-2-102.

17-5-804. Use of capital projects account. The capital projects account must be segregated by the treasurer from all other money in that or any other account in the state treasury and used only to pay costs of the projects for which bonds were issued, in accordance with the respective bond accounts. The department may transfer all money authorized by the legislature for its administrative expenditures from the capital projects account to a special revenue fund, and for such purposes the money is statutorily appropriated as provided in 17-7-502.

History: En. Sec. 4, Ch. 184, L. 1983; amd. Sec. 4, Ch. 372, L. 1985; amd. Sec. 18, Ch. 703, L. 1985.

Cross-References

Fund structure, 17-2-102.

17-5-805. Bond anticipation notes — when issued — payment of principal and interest. (1) When the board has been authorized to issue and sell bonds under this part, it may, pending the issuance of the bonds, issue in the name of the state temporary notes in anticipation of the money to be derived from the sale of the bonds. The notes must be designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes may be used only for the purposes for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 1 year after the date of issue may be issued from time to time as the proceeds thereof are needed. Such notes must be authorized by the board and must have such terms and details as may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify:

(i) the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any one time;

(ii) the rate or rates of interest, the maximum rate of interest, or the interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) to be incurred through the issuance of such notes; and

(iii) the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as may be considered appropriate by the board, or the state treasurer in the event of such delegation. The board in its discretion, but subject to the limitations contained in this section, may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either in or outside of the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board may consider appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of

indebtedness, containing such terms and conditions as the board may authorize in the resolution approving them.

History: En. Sec. 5, Ch. 184, L. 1983.

Cross-References

Issuance of notes in anticipation of revenue, 17-1-201.

17-5-806. Bid security. Notwithstanding 18-1-203, in any case where bids are solicited for the purchase and sale of bonds or notes under this part, the bid must be accompanied by lawful money of the United States or a cashier's check, certified check, bank money order, or bank draft drawn and issued by any federally chartered or state-chartered bank that is insured by the federal deposit insurance corporation, in such amount as may be required by the board or by the state treasurer under authority of 17-5-805.

History: En. Sec. 6, Ch. 184, L. 1983.

Cross-References

Federal Deposit Insurance Corporation, Title 32, ch. 1, part 6.

Part 9

Highway Revenue Bonds

Part Cross-References

Highway revenue nondiversion, Art. VIII, sec. 8, Mont. Const.

17-5-901. Short title. This part may be cited as the "Montana Highway Revenue Bonds Act of 1983".

History: En. Sec. 1, Ch. 557, L. 1983.

17-5-902. Purpose. The purpose of this part is to provide for the financing of the cost of state highway and federal-aid highway projects through the issuance of highway revenue bonds secured by a pledge and appropriation of highway revenue.

History: En. Sec. 2, Ch. 557, L. 1983.

17-5-903. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of examiners created under 2-15-1007.

(2) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to this part as highway revenue bonds.

(3) "Cost", as applied to any highway project, means any cost of construction or acquisition of any part of the highway project, including but not limited to the cost of supervising, inspecting, and constructing the highway project, interest during construction and for up to 6 months thereafter, and all costs and expenses incidental thereto; the costs of locating, surveying, mapping, resurfacing, restoration, and rehabilitation; acquisition of rights-of-way; relocation assistance; elimination of hazards of railroad grade crossings; acquisition of replacement housing sites; and acquisition, rehabilitation, relocation, and construction of replacement housing; and improvements necessary to directly facilitate and control traffic flow, including grade separation of intersections, widening of lanes, channelization of traffic, and traffic control systems.

(4) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(5) "Highway projects" means the construction, reconstruction, maintenance, and repair of federal-aid highways and state highways as such terms are defined in 60-1-103.

(6) "Highway revenues" means the revenues specified in Article VIII, section 6, of the Montana constitution as revenues from gross vehicle weight fees and excise and license taxes (except general sales and use taxes, if any) on gasoline, fuel, and other energy sources used to propel vehicles on public highways and any other revenues, taxes, or receipts credited to the department in the state special revenue fund and the federal special revenue fund.

(7) "Outstanding bonds" means bonds issued and outstanding at any particular time but does not include bonds owned by the state, bonds that have been refunded, or bonds for the payment of which an irrevocable deposit of cash and United States government securities has been made in an amount sufficient to pay principal, interest, and redemption premium, if any, when due.

History: En. Sec. 3, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

17-5-904 through 17-5-910 reserved.

17-5-911. Highway revenue bond debt service account — deposit of bond proceeds. (1) There is in the debt service fund a highway revenue bond debt service account. Subject only to the prior pledge and appropriation made by 17-5-507, the state treasurer must deposit such highway revenues as may be pledged to the payment of particular bonds, to the credit of the highway revenue bond debt service account as required by resolution or indenture.

(2) All proceeds of an issue of bonds must be deposited in a separate account in the state special revenue fund, except that any premiums and accrued interest received may be deposited in a separate account in the debt service fund established for that bond issue by resolution or indenture. No more than the principal and interest on the bonds due in any year may be retained in the highway revenue bond debt service account for the payment of bonds. The remainder of pledged revenues is available for authorized purposes of the department. Money deposited in such separate accounts in the state special revenue fund until spent for project purposes may be pledged and appropriated for the payment of bonds, which are a first lien and prior charge upon such funds, and such funds may be used for payment of bonds to the extent highway revenues deposited in the highway revenue bond debt service account are not sufficient for such purpose.

(3) Interest and investment earnings on the separate accounts named in subsections (1) and (2) shall be retained in the separate accounts referred to in subsection (2).

History: En. Sec. 4, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983; amd. Sec. 3, Ch. 20, Sp. L. June 1986.

Cross-References

Fund structure, 17-2-102.

Interest income to general fund, 17-6-202(2).

17-5-912. Pledge of highway revenues. All or any portion of highway revenues may be pledged to the payment of the principal, interest, and redemption premium, if any, on particular issues of state highway revenue bonds, and such pledge is and remains at all times a first lien and prior charge upon such pledged highway revenues credited to the highway revenue bond debt service account, subject to a first lien and charge in favor of certain highway bonds as provided in 17-5-507 and subject to the pledge of particular highway revenues to secure particular issues of highway revenue bonds.

History: En. Sec. 5, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983.

Cross-References

State funds, Title 60, ch. 3, part 2.

17-5-913. Authority to issue highway revenue bonds. The board may issue and sell highway revenue bonds to finance the cost of highway projects, to pay the costs of issuing the bonds, and to provide for reserves, upon recommendation of the department. The state reserves the right to issue additional bonds secured equally and ratably by the pledge and appropriation of the highway revenues or separately secured by a portion of highway revenues subject only to the pledge of particular highway revenues to secure particular bonds.

History: En. Sec. 6, Ch. 557, L. 1983.

Cross-References

Highways — legislative policy and intent, 60-1-102.

17-5-914. Continuation of taxes — limit on additional highway revenue bonds. The legislature shall provide for the continued assessment, levy, collection, and deposit of highway revenues into the state special revenue fund for the credit of the department in amounts sufficient to pay, when due, the annual debt service charges on all outstanding highway revenue bonds. The board is authorized to include a contractual undertaking for the benefit of bondholders to this effect in the resolution or indenture under which the bonds are issued.

History: En. Sec. 7, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983.

Cross-References

State funds, Title 60, ch. 3, part 2.

17-5-915 through 17-5-920 reserved.

17-5-921. Bond anticipation notes — issued when — payment of principal and interest. (1) The board may, pending the issuance of bonds, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds, which notes are designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes must be used only for the purpose for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary or desirable to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from

time to time as the proceeds thereof are needed. Such notes must be authorized by the board and have such terms and provisions as may be provided by resolution of the board; however, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) of such notes, and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as may be considered appropriate by the board or, if there has been such a delegation, the state treasurer. The board may, in its discretion but subject to the limitations contained in this section, provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board may consider appropriate.

History: En. Sec. 8, Ch. 557, L. 1983.

Cross-References

Issuance of notes in anticipation of revenue, 17-1-201.

17-5-922. Form — principal and interest — fiscal agent — bonds authorized. (1) Each series of bonds may be issued by the board at public or private sale, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at such rate or rates or the method of determining such rate or rates, maturing at such times, not more than 40 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of a fiscal agency of the state as the board shall determine, subject to the limitations contained in this part. Any action taken by the board under this part must be approved by at least a majority vote of its members.

(2) In all other respects the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board, and the bonds must be issued under the great

seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board may employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(5) In connection with the issuance and sale of bonds, the board may arrange for lines of credit or letters of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for bonds issued pursuant to this part. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving the same.

(6) No more than $150 million of bonds issued under this part may be outstanding at any time. No additional bonds, other than refunding bonds, may be issued until the pledge in favor of the highway revenue bonds is satisfied and discharged.

History: En. Sec. 9, Ch. 557, L. 1983.

Cross-References

Rates of interest, Title 17, ch. 5, part 1.

Acceptance and issuance of drafts and letters of credit, 32-1-437.

17-5-923. Trust indenture. In the discretion of the board, bonds issued under this part may be secured by a trust indenture by and between the board and a trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the state. Each trust indenture or an executed counterpart thereof must be filed in the office of the secretary of state. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk and recorder of the county in which the property covered by the trust indenture is located is constructive notice of its content to all persons from the time of filing, and the recording of the trust indenture or its content is not necessary.

History: En. Sec. 10, Ch. 557, L. 1983.

Cross-References

Filing of security interest, Title 30, ch. 9, part 4.

Giving security for deposit prohibited — exceptions, 32-1-447.

17-5-924. Provisions for protecting bondholders. The resolution of the board providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state, the board, and the departments, boards, or agencies of state government in relation to the construction, reconstruction, improvement, maintenance, and repair of the highway projects financed with the proceeds of the bonds and the custody, safeguarding, and application of all money. The trust indenture may set forth the rights and remedies of the bondholders customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. No enumeration of particular powers granted by this section impairs any general grant of power contained in this part.

History: En. Sec. 11, Ch. 557, L. 1983.

17-5-925. Personal liability — suit to compel performance. (1) The members of the board and officers and employees of the departments, boards, or agencies of state government are not personally liable or accountable by reason of the issuance of or on any bond issued by the board under this part.

(2) Any holder of bonds issued under this part or any person or officer who is a party in interest, subject to any applicable agreements or trust indentures, may sue to enforce and compel the performance of the bond provisions as set out in this part.

History: En. Sec. 12, Ch. 557, L. 1983.

17-5-926. Negotiability of bonds. Bonds issued under this part are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

History: En. Sec. 13, Ch. 557, L. 1983.

Cross-References

Commercial paper, Title 30, ch. 3.

17-5-927. Signatures of board members. In case any member of the board whose signature appears on bonds or coupons issued under this part ceases to be a member before the delivery of the bonds, his signature is nevertheless valid and sufficient for all purposes as if the member had remained in office until delivery.

History: En. Sec. 14, Ch. 557, L. 1983.

17-5-928. Refunding obligations. (1) The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of refunding obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the state are governed by the appropriate provisions of this part that relate to the issuance of the obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under this part. The proceeds may be applied to the purchase, redemption, or payment of the outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

History: En. Sec. 15, Ch. 557, L. 1983.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

Crossover refunding bonds, Title 17, ch. 5, part 21.

17-5-929. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of notes and bonds issued by the state under this part.

History: En. Sec. 16, Ch. 557, L. 1983.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

17-5-930. Tax exemption of bonds — legal investments. (1) All bonds issued under this part, their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance, estate, and gift taxes.

(2) Bonds issued under this part are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money.

History: En. Sec. 17, Ch. 557, L. 1983.

Cross-References

Investment in state bonds by county, 7-7-123, 7-7-124.

Classification of bonds for tax, 15-6-204.

Part 10
Actions

Part Cross-References

Action to restrain bond issues — time for bringing, 7-7-105, 20-9-465.

17-5-1001. Action to restrain bond issues. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by the state of Montana or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the order, resolution, or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or in holding the election. No defense based upon any such defect, irregularity, or informality may be interposed in any action unless brought within this period.

(2) This section applies but is not limited to any action or defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

History: En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; R.C.M. 1947, 93-2612(part); amd. Sec. 4, Ch. 540, L. 1979.

Cross-References

Action to restrain bond issues — time for bringing, 7-7-105, 20-9-465.

Part 11
Public Obligations Registration

17-5-1101. Short title. This part may be cited as the "Model Public Obligations Registration Act of Montana".

History: En. Sec. 1, Ch. 364, L. 1983.

17-5-1102. Definitions. As used in this part, the following definitions apply:

(1) (a) "Authorized officer" means, with respect to any certificated public obligation:

(i) an individual whose signature to the certificated public obligation is required or permitted; or

(ii) an individual whom an authorized officer may, either alone or with the concurrence of another or others, permit to affix his signature to the certificated public obligation and who is so permitted in writing by the authorized officer with any required concurrence.

(b) "Authorized officer" means, with respect to any uncertificated public obligation, any individual referred to in this subsection (1) as an authorized officer with respect to a certificated public obligation of the same class or series.

(2) "Certificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) represented by an instrument; and

(c) either one of a class or series or by its terms divisible into a class or series of obligations.

(3) "Code" means the Internal Revenue Code of 1954, as amended.

(4) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official, or official body.

(5) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(6) "Financial intermediary" means a bank, broker, clearing corporation, or trust company or the nominee of any of them or other person or nominee which in the ordinary course of its business maintains public obligation accounts for its customers.

(7) "Issuer" means a public entity that:

(a) executes a certificated public obligation to evidence its duty to perform an obligation represented by the certificated public obligation;

(b) undertakes to perform an obligation that is an uncertificated public obligation; or

(c) becomes responsible for or in place of a public entity described as an issuer in this subsection (7).

(8) "Obligation" means an agreement of an issuer to pay principal and interest and includes a share, participation, or other interest in any such agreement.

(9) "Official actions" means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a public obligation.

(10) "Official or official body" means the officer or body that is empowered under the laws of one or more states, including this state, to provide for original issuance of a public obligation of the issuer by defining the obligation and its terms, conditions, and other incidents; the successor or successors of any such official or official body; and such other person or group of persons as

are assigned duties of such official or official body under applicable law from time to time.

(11) "Original issuance" means the first transfer of a public obligation by an issuer to a purchaser.

(12) "Public entity" means any entity, department, or agency that is empowered under the laws of one or more states, including this state, to issue obligations, any interest with respect to which may under any provision of law be provided an exemption from the income tax referred to in the code. The term "public entity" may include this state, a political subdivision, a municipal corporation, a state university or college, a school district or other special district, a joint agreement entity, a public authority, a public trust, a nonprofit corporation, or other organization.

(13) "Public obligation" means either a certificated or an uncertificated public obligation.

(14) "System of registration" and its variants means a plan:

(a) with respect to a certificated public obligation, that provides that:

(i) the certificated public obligation specify a person entitled to the public obligation or the rights it represents; and

(ii) transfer of the certificated public obligation may be registered upon books maintained for that purpose by or on behalf of the issuer; and

(b) with respect to an uncertificated public obligation, that provides that transfer of the uncertificated public obligation be registered upon books maintained for that purpose by or on behalf of the issuer.

(15) "Uncertificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) not represented by an instrument; and

(c) either one of a class or series or by its terms divisible into a class or series of obligations.

History: En. Sec. 2, Ch. 364, L. 1983.

17-5-1103. Declarations of state interest — purposes. (1) Sections 103 and 103A of the code provide that interest with respect to certain obligations may not be exempt from the income tax if they are not in registered form. It is therefore a matter of state concern that public entities be authorized to provide for the issuance of obligations in such form. It is a purpose of this part to authorize all public entities to establish and maintain a system pursuant to which obligations may be issued in registered form within the meaning of sections 103 and 103A of the code.

(2) Obligations have traditionally been issued in bearer rather than in registered form, and a change from bearer to registered form will significantly affect the relationships, rights, and duties of issuers of and the persons that deal with obligations and, by such effect, the costs. Such effects will impact the various issuers and varieties of obligations differently, depending on their legal and financial characteristics, their markets, and their adaptability to recent and prospective technological and organizational developments. It is therefore a matter of state concern that public entities be provided flexibility in the development of systems of registration and control over system incidents, so as to accommodate differing impacts. It is a purpose of this part to provide for the establishment and maintenance, and amendment from time

to time, of differing systems of registration of obligations, including system incidents, so as to accommodate the differing impacts upon issuers and varieties of obligations.

History: **En. Sec. 3, Ch. 364, L. 1983.**

Cross-References

Classification of state bonds for tax, 15-6-204.

Registration of investment securities, Title 30, ch. 8, part 4.

17-5-1104. Construction. This part must be construed in conjunction with the Uniform Commercial Code and the principles of contract law relative to the registration and transfer of obligations.

History: **En. Sec. 14, Ch. 364, L. 1983.**

Cross-References

Transfer of obligation, Title 28, ch. 1, part 10.

U.C.C. — investment securities, Title 30, ch. 8.

17-5-1105. Applicability — election — rescission. (1) Public obligations may be issued as certificated or uncertificated public obligations as provided in this part, notwithstanding provisions of law providing for issuance in other forms. Whenever bonds are issued under this part, the provisions of this part are alternative and supplemental to such other provisions.

(2) Nothing in this part limits or prevents the issuance of obligations in any other form or manner authorized by law.

(3) The provisions of this part may be applied to obligations that have previously been approved by vote, referendum, or hearing, authorizing or permitting the authorization of obligations in bearer and registered form or in bearer form only, and such obligations need not be resubmitted for a further vote, referendum, or hearing for the purpose of authorizing or permitting the authorization of obligations in registered form only.

History: **En. Sec. 13, Ch. 364, L. 1983.**

Cross-References

Definitions — certificated and uncertificated security, 30-8-102.

17-5-1106. Records — no public inspection — locations. (1) With regard to the ownership or pledge of public obligations, records are not subject to inspection or copying under any law of this state relating to the right of the public to inspect or copy public records.

(2) Registration records of the issuer may be maintained at locations inside or outside this state determined by the issuer.

History: **En. Sec. 12, Ch. 364, L. 1983.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Right to inspect and copy public records, 2-6-102, 2-6-104.

17-5-1107 through 17-5-1110 reserved.

17-5-1111. System of registration. (1) Each issuer is authorized to establish and regularly maintain a system of registration with respect to each public obligation that it issues. The system may be either a system pursuant to which only certificated public obligations are issued or a system pursuant to which both certificated and uncertificated public obligations are issued. The issuer may discontinue and reinstitute either system from time to time.

(2) The system must be established and regularly maintained or amended, discontinued, or reinstituted for the issuer by the official or official body.

(3) The system must be described in the official actions that provide for original issuance and in subsequent official actions providing for amendments and other matters from time to time. Such description may be by reference to a program of the issuer that is established by the official or official body.

(4) The system must define the method or methods by which transfer of the public obligations is effective with respect to the issuer, which method or methods are exclusive (substantial compliance being essential to a valid transfer) and by which payment of principal and any interest must be made. The system may permit the issuance of public obligations in any denomination to represent several public obligations of smaller denominations. The system may also provide for the form of any certificated public obligations, for differing record and payment dates, for varying denominations, and for accounting, canceled certificate destruction, and other incidental matters.

(5) Under a system pursuant to which both certificated and uncertificated public obligations are issued, both types of public obligations may be regularly issued or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners. Under a system pursuant to which uncertificated public obligations are regularly issued, provisions may be made for registration of pledges and releases.

(6) The system may include covenants of the issuer as to amendments, discontinuances, and reinstitutions and the effect of such on the exemption of interest from the income tax provided for by the code.

(7) If the effect of a conversion from one of the forms of public obligations provided for in this part to a form not provided for in this part is that interest will continue to be exempt from the income tax provided for by the code, this part does not preclude such conversion.

(8) To the extent not inconsistent with this part, the rights provided by other laws with respect to obligations in other forms must be provided with respect to obligations in forms that may be used under this part.

History: En. Sec. 4, Ch. 364, L. 1983.

Cross-References

Registration of bonds, 7-7-4257.

Commercial paper — transfer and negotiation, Title 30, ch. 3, part 2.

Investment securities — registration, Title 30, ch. 8, part 4.

Duty of authenticating trustee, transfer agent, or registrar, 30-8-406.

17-5-1112. Certificated public obligation — execution — authentication. (1) A certificated public obligation must be executed by the issuer by:

(a) the signing by an authorized officer with the manual signature of such officer; or

(b) the signing by such officer with a facsimile signature in lieu of the manual signature of such officer.

(2) Each certificated public obligation may, in addition to the signature or signatures of an authorized officer or officers, have placed upon it a certificate or certificates as authenticating trustee, registrar, transfer agent,

or the like. Such certificate may be signed by the manual signature of an individual or by a facsimile signature in lieu of a manual signature, provided that at least one certificate is signed by a manual signature.

(3) The certificated public obligation must bear the manual signature of either:

(a) an authorized officer as defined in 17-5-1102; or

(b) a person described in subsection (2).

History: En. Sec. 5, Ch. 364, L. 1983.

Cross-References

Use of facsimile signatures on bonds, 2-16-114.

Warranties on presentment and transfer of certificated securities, 30-8-306.

17-5-1113. Certificated public obligation — signatures. (1) No certificated public obligation signed by the authorized officers at the time of the signing is invalid or without binding effect even though before the issuance thereof any or all of such officers have ceased to fill their respective offices.

(2) Any authorized officer employed to sign any certificated public obligation may adopt as and for the signature of the officer the signature of a predecessor in office in the event that such predecessor's signature appears on such certificated public obligation.

History: En. Sec. 6, Ch. 364, L. 1983.

Cross-References

Effect of delivery without endorsement — right to compel endorsement, 30-8-307.

17-5-1114. Certificated public obligation — seal. When a seal is required or permitted in the execution of any certificated public obligation, an authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

History: En. Sec. 7, Ch. 364, L. 1983.

Cross-References

Seals, Title 1, ch. 4, part 2.

Certificated securities, 30-8-105.

17-5-1115. Uncertificated public obligation — signed statements. The issuer shall provide, with respect to its uncertificated public obligations, for the sending of written statements that provide a record of certain rights as of the time of issuance of the statements. The statements must be sent to each person acquiring rights by registration in uncertificated public obligations, and the statements so sent must be signed by an authorized officer or by a person whose signature is required or permitted to be placed on a certificated public obligation of the same class or series. Statements, as such, confer no right on the recipient. Statements are neither a negotiable instrument nor a security.

History: En. Sec. 8, Ch. 364, L. 1983.

Cross-References

Registration of pledge and release of uncertificated securities, 30-8-108.

Statements of uncertificated securities, 30-8-408.

17-5-1116 through 17-5-1120 reserved.

17-5-1121. Agents — depositories. (1) An issuer may appoint for a term as may be agreed, including for so long as a public obligation may be outstanding, corporate or other authenticating trustees, transfer agents, registrars, or paying or other agents and specify their rights, compensation, and duties, limit their liabilities, and provide for their payment of liquidated damages in the event of breach of certain of the duties imposed, which liquidated damages may be made payable to a financial intermediary. No trustee, transfer agent, registrar, paying or other agent need have an office or do business within this state.

(2) An issuer may enter into agreements with custodian banks and financial intermediaries, and nominees of any of them, in connection with the establishment and maintenance by others of a central depository system for the transfer or pledge of public obligations. The custodian banks, financial intermediaries, and nominees may, if qualified and acting as fiduciaries, also serve as authenticating trustees, transfer agents, registrars, or paying or other agents of the issuer with respect to the same issue of public obligations.

History: En. Sec. 9, Ch. 364, L. 1983.

Cross-References

Securities — transfer or pledge within central depository system, 30-8-320.

Duty of authenticating trustee, transfer agent, or registrar, 30-8-406.

17-5-1122. Costs — collection. (1) An issuer, prior to or at original issuance, may provide as a part of a system of registration that the transferor or transferee of the public obligations pay all or a designated part of the costs of the system, that costs be paid out of the proceeds of the public obligations, or that both methods be used. The portion of the costs of the system not provided to be paid by the transferor or transferee or out of proceeds is the liability of the issuer.

(2) The issuer may as a part of the system provide for reimbursement or for satisfaction of its liability by payment by others. The issuer may enter into agreements with others respecting reimbursement or payment, may establish fees and charges pursuant to such agreements or otherwise, and may provide that the amount or estimated amount of the fees and charges must be reimbursed or paid from the same sources and by means of the same collection and enforcement procedures and with the same priority and effect as with respect to the obligation.

History: En. Sec. 10, Ch. 364, L. 1983.

17-5-1123. Deposits for security. Whenever under any law of this state a deposit of public obligations is authorized as security, public obligations otherwise meeting the authorized criteria may be deposited and must be accepted as security, provided that:

(1) in the case of a certificated public obligation, the instrument is assigned to the holder of the deposit; and

(2) in the case of an uncertificated public obligation, registration of a pledge is authorized by the system and the pledge of the uncertificated obligation is registered.

History: En. Sec. 11, Ch. 364, L. 1983.

Cross-References

State and local bonds and warrants as security for deposits of public funds, 17-6-103.

Part 12

Allocation of State and Local Private Activity Bonds (Repealed. Sec. 15, Ch. 190, L. 1987)

Part Compiler's Comments

Histories of Repealed Sections:

17-5-1201 and 17-5-1202. En. Secs. 1, 2, Ch. 426, L. 1985.

17-5-1203 through 17-5-1210 reserved.

17-5-1211 through 17-5-1220. En. Secs. 3 through 12, Ch. 426, L. 1985.

Part 13

Montana Unified Volume Cap Bond Allocation Plan Act

17-5-1301. Short title. This part may be cited as "The Montana Unified Volume Cap Bond Allocation Plan Act".

History: En. Sec. 1, Ch. 190, L. 1987.

17-5-1302. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Allocation" means an allocation of a part of the volume cap to an issuer pursuant to this part.

(2) "Board" means the board of examiners.

(3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.

(4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.

(5) "Department" means the department of administration.

(6) "Governmental bonds" means bonds other than private activity bonds.

(7) "Issuer" means a state issuer or local issuer.

(8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.

(9) "Local portion" means that portion of the volume cap reserved for local issuers.

(10) "Montana board of housing" (MBH) means the board created in 2-15-1814.

(11) "Montana board of investments" (MBI) means the board provided for in 2-15-1808.

(12) "Montana health facility authority" (MHFA) means the authority provided for in 2-15-1815.

(13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit corporation established under Title 20, chapter 26, part 11.

(14) "Private activity bonds" (PABs) has the meaning prescribed under section 1301 of the tax act.

(15) "State issuer" means the state and any agency thereof authorized to issue private activity bonds. For this part only, the Montana higher education student assistance corporation is considered an agency of the state.

(16) "State portion" means that portion of the volume cap reserved for state issuers.

(17) "Tax act" means the Tax Reform Act of 1986 enacted by the United States congress.

(18) "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act.

History: **En. Sec. 2, Ch. 190, L. 1987; amd. Sec. 1, Ch. 168, L. 1991.**

17-5-1303 through 17-5-1310 reserved.

17-5-1311. Volume cap and reservations. For each calendar year, the state's volume cap is $150 million. In each calendar year, subject to the provisions established by 17-5-1312 and 17-5-1313, $105 million of the volume cap is the state portion and $45 million is the local portion.

History: **En. Sec. 3, Ch. 190, L. 1987.**

17-5-1312. Allocation to state issuers. (1) Except as provided in subsection (5), the state portion must be allocated to state issuers pursuant to 17-5-1316.

(2) As a condition of receiving an allocation, each state issuer, upon issuance of the bonds, shall pay 30 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit.

(3) The following set-asides must be made in each calendar year for the following state issuers:

State Issuer	Percentage	Allocation Amount
Board	4	$4,200,000
MBH	41	43,050,000
MBI	25	26,250,000
MHESAC	26	27,300,000
MHFA	4	4,200,000
Total	100%	$105,000,000

(4) Each set-aside expires on the first Monday in September.

(5) Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to 17-5-1316 and no state issuer is entitled to an allocation except from its set-aside unless otherwise provided by the governor.

(6) After the expiration date, the amount of the set-aside remaining unallocated is available for allocation by the department to issuers pursuant to 17-5-1316 without preference or priority.

History: **En. Sec. 4, Ch. 190, L. 1987; amd. Sec. 2, Ch. 168, L. 1991.**

17-5-1313. Allocation to local issuers. (1) The local portion must be allocated by the department pursuant to 17-5-1316, and no local issuer is entitled to an allocation except from the local portion set-aside.

(2) No more than $20 million of the local portion may be allocated for a single project or purpose prior to the first Monday in September of each year.

(3) After the first Monday in September, the local portion must be allocated by the department to issuers pursuant to 17-5-1316 without preference, priority, or limitation.

History: **En. Sec. 5, Ch. 190, L. 1987.**

17-5-1314. Authorization by the governor. The governor may order an allocation different than that allocated by the department to state and local issuers pursuant to 17-5-1312 and 17-5-1313.

History: **En. Sec. 6, Ch. 190, L. 1987.**

17-5-1315. Carryforward elections. (1) Between the first Monday in December and the second Wednesday in December, each issuer shall file with the department an application for a carryforward election with respect to any unallocated portion of the volume cap for the calendar year.

(2) Applications for carryforward elections may be filed only with respect to carryforward purposes authorized by the tax act. Each application for a carryforward election must contain the information required of an application for allocation under 17-5-1316 and any additional information required by either the tax act or the department.

(3) If, as of the second Wednesday in December, the aggregate amount of applications for carryforward elections does not exceed the amount of the unallocated and unused volume cap, each application constitutes a valid carryforward election within the meaning of the tax act.

(4) If, as of the second Wednesday in December, the aggregate amount of applications for carryforward elections exceeds the unallocated and unused volume cap, the department shall determine which applications constitute a valid carryforward election within the meaning of the tax act.

(5) After receipt of an application, the department shall notify the applicant in writing of either the approval of the carryforward election or the reason for disapproval.

History: **En. Sec. 7, Ch. 190, L. 1987.**

17-5-1316. Allocations by the department. (1) The department shall administer the allocation of cap bonds to issuers in accordance with this section and 17-5-1312. Applications for an allocation for each issue of bonds must be made to the department in an acceptable form and, if applicable, must contain the following:

(a) the name of the issuer;

(b) a description of the purpose or purposes for which the proceeds of the cap bonds will be used, including, if appropriate, a description of the project or projects to be financed;

(c) the location of the project or projects;

(d) the name and address of each project owner and user;

(e) a certified copy of the inducement resolution adopted or official action taken by the issuer, pursuant to the tax act, approving the project or the purpose and granting preliminary authorization for the issuance of the cap bonds;

(f) the preliminary opinion of a qualified bond counsel stating that the proposed purpose for which the cap bonds are to be issued qualifies under applicable state law and the tax act and that the interest on the bonds is not taxable as gross income for purposes of federal income taxation;

(g) evidence that all public hearing requirements concerning the proposed purpose and project have been met;

(h) a copy of a letter from an underwriter, bank, or other financial institution certifying that in its opinion the proposed financing is feasible, that the cap bonds may be successfully sold under current market conditions, and that it has reviewed all of the information necessary to form its opinion;

(i) the amount of allocation requested; and

(j) such other information as the department considers necessary.

(2) The department shall issue allocations in chronological order of the receipt of completed applications. Completed applications received by the department on the same day must be ranked according to the earliest inducement resolution or official action date.

History: En. Sec. 8, Ch. 190, L. 1987.

17-5-1317. Notification of approval or disapproval by the department. After receipt of an application for an allocation, the department shall notify the applicant in writing of either the approval of the allocation or the reasons for disapproval.

History: En. Sec. 9, Ch. 190, L. 1987.

17-5-1318. Terms of allocations. (1) Unless terminated earlier by the issuer, an allocation is valid for 90 days from the date the department mails the notice of approval. Prior to the expiration of the 90-day period, the department may extend the period of validity for an additional 30 days upon presentation of evidence that an agreement to purchase the cap bonds for which the allocation was given has been obtained from an entity legally authorized to purchase them.

(2) If the cap bonds are not issued within the period of validity as determined under subsection (1), the allocation automatically expires.

(3) All allocations expire on December 31 of the year in which they were made. However, this subsection does not limit the term of an allocation for which a valid carryforward election has been made.

History: En. Sec. 10, Ch. 190, L. 1987.

17-5-1319 and 17-5-1320 reserved.

17-5-1321. Allocations not transferable. Allocations may not be transferred between projects or purposes.

History: En. Sec. 11, Ch. 190, L. 1987.

17-5-1322. Reapplication. (1) If the department disapproves an application for an allocation or if an allocation expires under 17-5-1318, the issuer may reapply for an allocation.

(2) A reapplication must be reviewed according to the chronological order of its receipt. Priority or preference may not be given to a reapplication.

History: En. Sec. 12, Ch. 190, L. 1987.

17-5-1323. Recordkeeping. The department shall maintain complete records of all applications for allocations to assure that the requirements of the tax act with respect to the volume cap are observed.

History: En. Sec. 14, Ch. 190, L. 1987.

17-5-1324 reserved.

17-5-1325. Reassignment of bonding authority for agricultural purposes — contingency. If, at some time in the future, federal taxation laws allow the use of tax-exempt bonds to provide loans for the acquisition of farm or ranch land, a downpayment on the acquisition of farm or ranch land, or the acquisition or construction of depreciable property used in the operation of a farm or ranch, the allocation of bonding authority originally assigned to the Montana agricultural loan authority must be reassigned to the Montana board of investments to provide those loans.

History: En. Sec. 3, Ch. 168, L. 1991.

Part 14 reserved

Part 15

Economic Development Bonds

17-5-1501. Short title. This part shall be known and may be cited as the "Montana Economic Development Bond Act of 1983".

History: En. Sec. 1, Ch. 701, L. 1983.

17-5-1502. Legislative declaration. (1) It is the policy of the state of Montana, in the interest of promoting the health, safety, and general welfare of all the people of the state, to increase job opportunities and to retain existing jobs by making available, through the board of investments, funds for industrial, commercial, manufacturing, natural resource, agricultural, livestock, recreational, tourist, and health care development.

(2) The legislature finds that:

(a) a vigorous, diversified, and growing economy is the basic source of job opportunities;

(b) protection against unemployment and its economic burdens and the spread of economic stagnation can best be provided by promoting, attracting, stimulating, and revitalizing a diversified economy with contributions from industry, manufacturing, commerce, natural resource development, agriculture, livestock, recreation, tourism, and health care facilities; and

(c) the state of Montana has a responsibility to help create a favorable climate for new and improved job opportunities and a stable, growing, and healthy economy for its citizens by encouraging the development of business.

History: En. Sec. 2, Ch. 701, L. 1983; amd. Sec. 7, Ch. 581, L. 1987.

Cross-References

Planning and economic development, Title 90, ch. 1, part 1.

17-5-1503. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this part.

(3) "Department" means the department of commerce provided for in 2-15-1801.

(4) "Finance" means to supply capital and, in the case of agricultural enterprises, to refinance a project and project costs.

(5) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board.

(6) "Local government" means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.

(7) "Major project" means a project whose cost or appraised value exceeds $800,000.

(8) "Project" means a project as defined in 90-5-101.

(9) "Project costs" means the costs of acquiring or improving any project, including the following:

(a) the actual cost of acquiring or improving real estate for any project;

(b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;

(c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds;

(e) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction; and

(f) working capital for agricultural enterprise projects for a period not to exceed 1 year.

History: En. Sec. 1, Ch. 686, and Sec. 3, Ch. 701, L. 1983; amd. Sec. 1, Ch. 94, L. 1987; amd. Sec. 8, Ch. 581, L. 1987; amd. Sec. 1, Ch. 684, L. 1989.

17-5-1504. Powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) invest any funds not required for immediate use, as the board considers appropriate, subject to any agreements with its bondholders and noteholders;

(6) arrange for lines of credit from and enter into participation agreements with any financial institution;

(7) issue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and securing the payment of the bonds as provided in this part;

(8) enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of this part;

(9) sell, purchase, or insure loans to finance the costs of projects;

(10) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(11) enter into agreements or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity or organization in carrying out this part;

(12) with regard to property:

(a) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of such property;

(c) hold, sell, assign, or otherwise dispose of any lease, mortgage, or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure;

(h) operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes, provided such action is consistent with any agreement with such holders;

(13) service, contract, and pay for the servicing of loans;

(14) provide financial analysis and technical assistance where considered appropriate;

(15) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal, interest, security, or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(17) procure insurance or guaranties in amounts and in the form the board considers desirable or necessary, from any party, including a governmental agency, against any loss in connection with its lease agreements, loan agreements, mortgage loans, and other assets or property; and

(18) perform any other acts necessary and convenient to carry out the purposes of the board and this part.

History: En. Sec. 2, Ch. 686, and Sec. 4, Ch. 701, L. 1983.

Cross-References

Exemption from loan limits, 32-1-432.

General duties of boards, 37-1-131.

Industrial development projects, Title 90, ch. 5, part 1.

17-5-1505. Financing programs of the board. (1) The board may:

(a) invest in, purchase or make commitments to purchase, and take assignment from financial institutions of notes, mortgages, loan agreements, and other securities evidencing loans for the acquisition, construction, reconstruction, or improvement of projects located in the state, under terms and conditions determined by the board;

(b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial institutions, projects located in the state and lease such projects to others for such rentals and upon such terms and conditions as determined by the board;

(c) make loans to financial institutions, under terms and conditions determined by the board, requiring the proceeds to be used by the financial institution for the purpose of financing the acquisition, construction, reconstruction, or improvement of projects located in the state; or

(d) finance projects located in the state upon such terms and conditions as determined by the board.

(2) The board may not operate any project as a business or in any other manner except as the lessor thereof or as may be necessary for a temporary period through the enforcement of its rights under a lease, loan agreement, or other security agreement.

History: En. Sec. 3, Ch. 686, and Sec. 5, Ch. 701, L. 1983; amd. Sec. 1, Ch. 640, L. 1985.

Cross-References

The Montana Unified Volume Cap Bond Allocation Plan Act, Title 17, ch. 5, part 13.

State investments, Title 17, ch. 6, part 2.

Investments of financial institutions, 32-1-424.

Exemption from loan limits, 32-1-432.

17-5-1506. Bonds and notes for projects and major projects. (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds must be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds must bear interest at a stated rate or rates

or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds secured under 17-5-1515 outstanding at any one time, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $75 million.

History: En. Sec. 4, Ch. 686, and Sec. 6, Ch. 701, L. 1983; amd. Sec. 2, Ch. 640, L. 1985; amd. Sec. 1, Ch. 589, L. 1991.

Cross-References

Limited obligation bonds — form and contents — sale — negotiability — filing, 90-5-103.

17-5-1507. Bond anticipation notes — issuance — payment of principal and interest. (1) The board may, pending the issuance of bonds, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds. The notes shall be designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes must be used only for the purpose for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds thereof are needed. The notes must be authorized by the board and must have such terms and details as may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes to be incurred through the issuance of such notes), and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time. The board may delegate to the administrator of the board the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of

interest, and such other terms and details of the notes as considered appropriate by the board or the administrator in the event of such delegation. The board in its discretion but subject to the limitations contained in this section may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state of Montana, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board considers appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving the same.

History: En. Sec. 5, Ch. 686, and Sec. 7, Ch. 701, L. 1983.

Cross-References

Issuance of notes in anticipation of revenue, 17-1-201.

17-5-1508. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue thereof may contain provisions, which must be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenue or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including lease agreements, loan agreements, mortgages, and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from lease agreements, loan agreements, and mortgages owned by the board, and the payment of the principal of mortgages owned by the board;

(4) the setting aside of reserves for debt service funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(5) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of

notes or bonds the holders of which shall consent thereto, and the manner in which such consent may be given;

(8) a commitment to employ adequate and competent personnel at reasonable compensation; to set salaries, fees, and charges as may be determined by the board in conjunction with the department; and to maintain suitable facilities and services for the purpose of carrying out its programs;

(9) vesting in a trustee such property, rights, powers, and duties in trust as the authority determines to be necessary;

(10) defining the acts or omissions that shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(11) any other matters of like or different character that in any way affect the security or protection of the holders of the notes or bonds.

History: En. Sec. 6, Ch. 686, and Sec. 8, Ch. 701, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Provisions for security of bondholders, 90-5-105.

17-5-1509. Personal liability. The board and employees of the department are not personally liable or accountable by reason of the issuance of or on any bond or note issued by the board.

History: En. Sec. 7, Ch. 686, and Sec. 9, Ch. 701, L. 1983.

17-5-1510. Purchase of notes and bonds — cancellation. The board may, subject to existing agreements with noteholders or bondholders and out of any funds available for that purpose, purchase notes or bonds of the board, which shall then be canceled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment if the notes or bonds are then redeemable; or

(2) the redemption price applicable on the first date after the purchase on which the notes or bonds become subject to redemption, plus accrued interest to that date, if the notes or bonds are not then redeemable.

History: En. Sec. 8, Ch. 686, and Sec. 10, Ch. 701, L. 1983.

17-5-1511. Trust indenture. (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company, either inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The authority may provide by a trust indenture for the payment of the proceeds of the bonds and revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with the safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenses of the board.

History: En. Sec. 9, Ch. 686, and Sec. 11, Ch. 701, L. 1983.

17-5-1512. Negotiability of bonds. Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

History: En. Sec. 10, Ch. 686, and Sec. 12, Ch. 701, L. 1983.

Cross-References

Form of negotiable instruments, 30-3-104.

Certificated securities negotiable, 30-8-105.

17-5-1513. Signatures of board members. If board members whose signatures appear on notes, bonds, or coupons cease to be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes the same as if the members had remained in office until delivery.

History: En. Sec. 11, Ch. 686, and Sec. 13, Ch. 701, L. 1983.

17-5-1514. Accounts. The board may create funds and accounts necessary to implement this part. The funds and accounts may include:

(1) a fund into which bond proceeds are deposited;

(2) a common bond fund consisting of:

(a) a common debt service account;

(b) a capital reserve account as provided in 17-5-1515; and

(c) an operating account for defraying the operational costs of the board; and

(3) other funds or accounts.

History: En. Sec. 12, Ch. 686, and Sec. 14, Ch. 701, L. 1983; amd Sec. 48, Ch. 281, L. 1983.

Cross-References

Fund structure, 17-2-102.

17-5-1515. Reserve funds and appropriations. (1) The board may establish a capital reserve account and pay into it any:

(a) funds appropriated and made available by the state for the purpose of the account;

(b) proceeds of the sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and

(c) other funds which may be available to the board from any other source for the purpose of the account.

(2) All funds held in the capital reserve account must be used solely for the payment of the principal of or interest on the bonds secured in whole or in part by the account or the debt service fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account may not be withdrawn at any time in an amount that reduces the account to an amount less than the sum of minimum capital reserve requirements established in the resolutions or indentures of the board for the account except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and debt service fund payments for the payment of which other money pledged is not available. Any income or interest earned by or incremen-

tal to the capital reserve account due to its investment may be transferred to other accounts of the board to an extent that does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

History: En. Sec. 13, Ch. 686, and Sec. 15, Ch. 701, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

17-5-1516. Maintenance of capital reserve account. (1) In order to assure the maintenance of the capital reserve account, the chairman of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature shall be deposited in the capital reserve account.

(2) All amounts appropriated to the board under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, must be repaid to the state general fund without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses.

History: En. Sec. 14, Ch. 686, and Sec. 16, Ch. 701, L. 1983.

17-5-1517. Refunding obligations. The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of this part that relate to the issuance of obligations. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations and other available funds to the payment of principal, accrued interests, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested in such securities as the board considers appropriate.

History: En. Sec. 15, Ch. 686, and Sec. 17, Ch. 701, L. 1983.

Cross-References

Crossover refunding bonds, Title 17, ch. 5, part 21.

Refunding of bonds, 90-5-107.

17-5-1518. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part and their transfer and income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: En. Sec. 16, Ch. 686, and Sec. 18, Ch. 701, L. 1983.

Cross-References

Classification of state bonds for tax, 15-6-204.

17-5-1519. Repealed. Sec. 19, Ch. 589, L. 1991.

History: En. Sec. 17, Ch. 686, and Sec. 19, Ch. 701, L. 1983.

17-5-1520. Repealed. Sec. 19, Ch. 589, L. 1991.

History: En. Sec. 18, Ch. 686, and Sec. 20, Ch. 701, L. 1983.

17-5-1521. Adoption of rules. (1) The board shall adopt rules to establish:

(a) procedures for soliciting and evaluating applications and for notifying the local government of the application for purposes of complying with 17-5-1526 and 17-5-1527; and

(b) a system for evaluating applications, considering the following criteria:

(i) the applicant's net worth;

(ii) the applicant's training and experience in the industry involved in the proposed project;

(iii) the applicant's prospects for succeeding in the proposed project;

(iv) the degree to which the new or increased business resulting from the loan will meet the objectives of 17-5-1502; and

(v) any other factors the board may prescribe.

(2) The board shall adopt rules for the:

(a) organization, approval, standards, and regulation of project applicants;

(b) approval, standards, and regulation of financial institutions under this part;

(c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and guaranty programs; and

(d) such other matters as the board considers necessary or desirable.

History: En. Sec. 19, Ch. 686, and Sec. 21, Ch. 701, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

17-5-1522. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

History: En. Sec. 20, Ch. 686, and Sec. 22, Ch. 701, L. 1983.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

17-5-1523. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or interest on the obligation.

History: En. Sec. 21, Ch. 686, and Sec. 23, Ch. 701, L. 1983.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

17-5-1524. Taxation of projects. (1) Notwithstanding the fact that title to a project may be in the board, such projects are subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in that year. Such projects are not subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in that year.

(2) When personal property owned by the board is taxed under this section and such personal property taxes are delinquent, levy by warrant for distraint for collection of such delinquent taxes may be made only on personal property against which such taxes were levied.

History: En. Sec. 22, Ch. 686, and Sec. 24, Ch. 701, L. 1983.

Cross-References

Industrial development revenue bonds — taxation of projects, 90-5-110.

17-5-1525. Bonds as legal investment. (1) Bonds issued by the board under the provisions of this part are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) executors, administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under 17-5-1505 through 17-5-1518 and 17-5-1521 through 17-5-1529 are securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

History: En. Sec. 23, Ch. 686, and Sec. 25, Ch. 701, L. 1983; amd. Sec. 2, Ch. 589, L. 1991.

Cross-References

Permissible investments, 17-6-211.

Investments of financial institutions, 32-1-424.

Investments of building and loan associations, 32-2-406.

Investment of credit union funds, 32-3-701.

Investments of insurance companies, Title 33, ch. 2, part 8.

Powers of trustees, Title 72, ch. 34, part 3.

17-5-1526. Procedure prior to financing projects. (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons;

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

(g) an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or

county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes.

History: En. Sec. 26, Ch. 701, L. 1983; amd. Sec. 1, Ch. 296, L. 1985; amd. Sec. 1, Ch. 653, L. 1985; amd. Sec. 1, Ch. 273, L. 1987; amd. Sec. 5, Ch. 561, L. 1987; amd. Sec. 3, Ch. 589, L. 1991; amd. Sec. 1, Ch. 464, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 464 inserted (1)(g) requiring an applicant to submit a statement that the contractor will pay the standard prevailing wage for work on certain projects financed from bond proceeds; and made minor changes in style. Amendment effective April 21, 1993.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

17-5-1527. Procedure prior to financing major projects. (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons;

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

(g) an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and within 14 days shall advise the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes.

History: En. Sec. 24, Ch. 686, L. 1983; amd. Sec. 2, Ch. 296, L. 1985; amd. Sec. 2, Ch. 653, L. 1985; amd. Sec. 2, Ch. 273, L. 1987; amd. Sec. 6, Ch. 561, L. 1987; amd. Sec. 4, Ch. 589, L. 1991; amd. Sec. 2, Ch. 464, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 464 inserted (1)(g) requiring an applicant to submit a statement that the contractor will pay the standard prevailing wage for work on certain projects financed from bond proceeds; and made minor changes in style. Amendment effective April 21, 1993.

17-5-1528. Validity of pledge. Any pledge made by the board is valid and binding from the time the pledge is made. Revenue, money, or property pledged and received by the board is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded.

History: En. Sec. 25, Ch. 686, and Sec. 27, Ch. 701, L. 1983.

17-5-1529. Annual audits. (1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.

(2) The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds.

History: En. Sec. 26, Ch. 686, and Sec. 28, Ch. 701, L. 1983; amd. Sec. 1, Ch. 308, L. 1985.

Cross-References
Audit costs and contracts, Title 5, ch. 13, part 4.

Part 16
Municipal Finance Consolidation Act

Part Cross-References
Long-term loans — destroyed school property, 20-6-640.

17-5-1601. Short title. This part shall be known and may be cited as the "Municipal Finance Consolidation Act of 1983".

History: En. Sec. 1, Ch. 620, L. 1983.

17-5-1602. Policy and purpose. (1) It is the policy of the state of Montana to:

(a) foster and promote, by all reasonable means, the provision of efficient capital markets and facilities for borrowing money by counties, cities, towns, school districts, special taxing districts, and other public bodies to pay for capital improvements and other needs as otherwise authorized by law; and

(b) reduce, to the extent possible, costs of local public indebtedness to taxpayers and residents by affording public bodies an appropriate degree of flexibility and choice in the marketing of their debt securities so as to minimize marketing costs and interest rates.

(2) It is the purpose of this part to promote the policies stated in subsection (1) by:

(a) creating a means for public bodies to pool, in effect, the debt instruments they are otherwise authorized to offer for sale to the investment community in order to obtain economies of scale and reduce marketing and interest costs; and

(b) providing additional security for the payment of bonds and notes held by investors and thereby further reducing interest costs.

History: En. Sec. 2, Ch. 620, L. 1983.

Cross-References
Local government — debt management, Title 7, ch. 7.

17-5-1603. Liberal construction. This part and the powers granted in this part must be liberally construed to effectuate the policies and purposes stated in this part.

History: En. Sec. 3, Ch. 620, L. 1983.

17-5-1604. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Local government unit" means any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, other special taxing district, an assessment or service district authorized by law to borrow money, or the board of regents of the Montana university system.

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630.

History: En. Sec. 4, Ch. 620, L. 1983; amd. Sec. 35, Ch. 620, L. 1983; amd. Sec. 9, Ch. 581, L. 1987; amd. Sec. 1, Ch. 593, L. 1991; amd. Sec. 1, Ch. 380, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 380 in (3), after "taxing district", inserted "an assessment or service district authorized by law to borrow money". Amendment effective April 15, 1993.

17-5-1605. Board of investments to implement. The board of investments may make and enforce orders, rules, and bylaws that are necessary or desirable for the implementation of this part.

History: En. Sec. 5, Ch. 620, L. 1983; amd. Sec. 35, Ch. 620, L. 1983; amd. Sec. 10, Ch. 581, L. 1987.

Cross-References

Unified investment program — general provisions, 17-6-201.

17-5-1606. Bonds, bond anticipation notes, and notes of the board. (1) The board may by resolution, from time to time, issue negotiable notes and bonds to finance loans or refinance its loans to local government units and its purchases of their bonds, registered warrants, and tax or revenue anticipation notes and other notes, to establish or replenish reserves securing the payment of its bonds and notes, and to finance all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time:

(a) issue notes to renew notes and bonds to pay notes, including interest;

(b) whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured; and

(c) issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) The board may by resolution, from time to time, in anticipation of the sale of its securities under this part, issue temporary notes and renewal notes.

(4) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be an obligation of the board payable out of any revenues, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(5) The notes and bonds must be authorized by resolutions of the board, shall bear a date, and shall mature at times as the resolutions provide. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate or rates; be in denominations; be in a form, either coupon or registered; carry registration privileges; be executed in a manner; be payable in a medium of payment, at places inside or outside the state; and be subject to terms of redemption as provided in resolutions of the board. The notes and bonds of the board may be sold at public or private sale at such prices, which may be above or below par, as are determined by the board.

History: En. Sec. 6, Ch. 620, L. 1983; amd. Sec. 9, Ch. 481, L. 1985.

Cross-References

Issuance of notes in anticipation of revenue, 17-1-201.

Redemption of bonds before maturity, 17-6-213.

17-5-1607. Participation voluntary. Use of the financing mechanism created by this part is entirely voluntary, and no local government unit may be required to sell its bonds, bond anticipation notes, or notes to the board.

History: En. Sec. 7, Ch. 620, L. 1983.

17-5-1608. Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part (except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101) to exceed $50 million.

History: En. Sec. 8, Ch. 620, L. 1983; amd. Sec. 10, Ch. 481, L. 1985; amd. Sec. 2, Ch. 94, L. 1987.

17-5-1609. Purchase of anticipation notes. Notwithstanding any other provision of law, a local government unit may issue and the board may purchase notes in anticipation of an otherwise authorized sale of municipal securities. In connection with any purchase of anticipation notes, the board may by agreement with the local government unit impose terms, conditions, and limitations that in the board's opinion are proper under the circumstances and for the purposes and security of the board and the holders of its bonds or notes.

History: En. Sec. 9, Ch. 620, L. 1983.

Cross-References

Sale of notes in anticipation of state revenue, 7-7-109.

17-5-1610. Refunding obligations. (1) The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption premium and any interest accrued to or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the board are governed by the appropriate provisions of this part that relate to the issuance of obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under this part. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds of refunding obligations may be invested as provided in Title 17, chapter 6.

History: En. Sec. 10, Ch. 620, L. 1983.

Cross-References

County refunding general obligation bonds, Title 7, ch. 7, part 23.

Municipal refunding general obligation bonds, Title 7, ch. 7, part 43.

Crossover refunding bonds, Title 17, ch. 5, part 21.

17-5-1611. Additional powers of the board. In addition to all other powers conferred on the board by this part or any other law, the board has the power:

(1) to purchase or hold municipal bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes at prices and in a manner the board considers advisable;

(2) to sell municipal bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes acquired or held by it at prices without relation to cost and in a manner the board considers advisable;

(3) to invest funds or money acquired by the board as provided in 17-5-1641;

(4) to prescribe the form of application or procedure required of a local government unit for a loan or purchase of its municipal bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes; fix the terms and conditions of the loan or purchase; and enter into agreements with local government units with respect to loans or purchases;

(5) to render services to local government units in connection with public or private sales of their municipal bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes that are eligible for purchase by the board under this part, including advisory and other services, and charge the local government units for such services;

(6) to charge for its costs and services in reviewing or acting upon a proposed loan to a local government unit or a proposed purchase by the board of municipal bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes of the local government unit, whether or not the loan is made or the municipal bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes are purchased;

(7) to fix and establish terms, interest rates, and provisions with respect to a purchase of municipal bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes by the board, including:

(a) the date and maturities of the bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes;

(b) provisions as to redemption or payment before maturity; and

(c) any other matters judged by the board to be necessary, desirable, or advisable for the purchase or loan;

(8) in connection with any loan to a local government unit or purchase of municipal bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes of a local government unit, to consider:

(a) the lawfulness and validity of the purpose to be served by the loan or purchase;

(b) the ability of the local government unit to secure borrowed money from other sources and the costs thereof;

(c) the ability of the local government unit to repay the loan, notes, or bonds;

(d) the priority of need for the particular public improvement or purpose to be financed; and

(e) varying the terms and conditions of its loans or purchases as between various local government units in accordance with their respective priorities and credit worthiness;

(9) to conduct examinations and hearings and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material to its information and necessary to carry out this part;

(10) to issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before the board;

(11) to appoint, employ, or contract for the services of officers, employees, agents, financial or professional advisers, and attorneys and to pay such compensation for their services as the board may determine;

(12) to procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it considers desirable;

(13) to the extent permitted under its contracts with the holders of bonds or notes of the board, to consent to modification of the rate of interest, the time for payment of any installment of principal or interest, or the security for any other term of a bond, bond anticipation note, note, contract, or agreement of any kind to which the board is a party; and

(14) to do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this part.

History: En. Sec. 11, Ch. 620, L. 1983; amd. Sec. 11, Ch. 481, L. 1985.

17-5-1612 through 17-5-1620 reserved.

17-5-1621. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue thereof may contain provisions that must be a part of the contract or contracts with the holders thereof as to:

(1) pledging all or any part of the revenue or funds of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) the setting aside of reserves for debt service funds in the possession of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(3) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue thereof;

(4) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(5) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(6) a commitment to employ adequate and competent personnel at reasonable compensation, salaries, fees, and charges as may be determined by the board in conjunction with the department and to maintain suitable facilities and services for the purpose of carrying out its programs;

(7) vesting in a trustee such property, rights, powers, and duties in trust as the board determines; and

(8) defining the acts or omissions that constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies may not be inconsistent with the laws of this state and the other provisions of this part.

History: En. Sec. 12, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Resolution to issue county bonds, 7-7-2238.

Resolution to issue municipal bonds, 7-7-4236.

17-5-1622. Validity of pledge. A pledge by the board is valid and binding from the time the pledge is made. The revenues, money, or property pledged and thereafter received by the board is immediately subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

History: En. Sec. 13, Ch. 620, L. 1983.

17-5-1623. Nonimpairment by the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and a local government unit or between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

History: En. Sec. 14, Ch. 620, L. 1983.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

17-5-1624. Trust indenture. (1) In the discretion of the board, the bonds or notes of the board may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The board may provide by a trust indenture for the payment of the proceeds of the bonds or notes and the revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the general overhead cost of the board.

History: En. Sec. 15, Ch. 620, L. 1983.

17-5-1625. Presumption of validity. After issuance, all bonds or notes of the board are conclusively presumed to be fully authorized by and issued under all the laws of this state and any person or governmental unit is estopped from questioning their proper authorization, sale, issuance, execution, or delivery by the board.

History: En. Sec. 16, Ch. 620, L. 1983.

17-5-1626. Signatures of board members. If any of the board members whose signatures appear on notes or bonds or coupons cease to be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes as if the members had remained in office until delivery.

History: En. Sec. 17, Ch. 620, L. 1983.

Cross-References

Form and execution of county bonds, 7-7-2255.

Form and execution of municipal bonds, 7-7-4255.

17-5-1627. Negotiability of bonds or notes. Notwithstanding any other provisions of law, a bond or note issued under this part is fully negotiable for all purposes of the Uniform Commercial Code, Title 30, chapters 1 through 9, and a holder or owner of a bond or note or of a coupon appurtenant to it, by accepting the bond, note, or coupon, is conclusively presumed to have agreed that the bond, note, or coupon is fully negotiable for all purposes of the Uniform Commercial Code.

History: En. Sec. 18, Ch. 620, L. 1983.

17-5-1628. Bonds or notes as legal investments. Notwithstanding the restrictions of any other law, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest debt service funds, money, or other funds belonging to them or within their control in bonds or notes issued under this part.

History: En. Sec. 19, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Permissible investments, 17-6-211.

Investments of financial institutions, 32-1-424.

Investments of building and loan associations, 32-2-406.

Investment of credit union funds, 32-3-701.

Investments of insurance companies, Title 33, ch. 2, part 8.

Powers of trustees, Title 72, ch. 34, part 3.

17-5-1629. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: En. Sec. 20, Ch. 620, L. 1983.

17-5-1630. Reserve fund. (1) The board shall establish and maintain a municipal finance consolidation act reserve fund, to which there shall be deposited or transferred:

(a) all money appropriated by the legislature for the purposes of the fund in accordance with the provisions of subsection (4);

(b) all proceeds of bonds required to be deposited in the fund by terms of a contract between the board and its bondholders or a resolution of the board with respect to the proceeds of bonds;

(c) the proceeds of any bond issue of the state that is authorized for such purpose;

(d) all other money appropriated by the legislature to the reserve fund; and

(e) any other money or funds of the board that it decides to deposit in the fund.

(2) All money held in the reserve fund shall be used solely for the payment of the principal of or interest on the bonds or notes secured in whole or in part by the fund or the debt service fund payments with respect to the bonds or notes, the purchase or redemption of the bonds or notes, the payment of interest on the bonds or notes, or the payment of any redemption premium required to be paid when the bonds or notes are redeemed prior to maturity. Money in the reserve fund may not be withdrawn at any time in an amount that reduces the fund to an amount less than the sum of minimum reserve requirements established in the resolutions or indentures of the board for the fund except, with respect to bonds or notes secured in whole or in part by the fund, for the purpose of making payment when due of principal, interest, redemption premiums, and debt service fund payments for the payment of which other money pledged is not available.

(3) Money in the reserve fund in excess of the required reserve may be withdrawn at any time by the board and transferred to another fund or account of the board established for purposes of this part, but not to any other fund or account.

(4) Nothing in this section creates a debt or liability of the state.

(5) Notwithstanding any provision of Title 17, chapter 6, the board may lend money for deposit to the reserve fund in an amount equal to any deficiency in the required debt service reserve. The loans shall be made on such reasonable terms and conditions as the board considers proper, including without limitation terms and conditions providing that the loans need not be repaid until the obligations of the board secured and to be secured by the reserve fund are no longer outstanding.

History: En. Sec. 21, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 11, Ch. 581, L. 1987.

Cross-References

Fund structure, 17-2-102.

17-5-1631. Additional funds and accounts. The board may in its discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to further the accomplishment of the purposes of this part or to comply with the provisions of any of its agreements or resolutions.

History: En. Sec. 22, Ch. 620, L. 1983.

17-5-1632 through 17-5-1640 reserved.

17-5-1641. Investment. (1) Unless otherwise required by a resolution or agreement of the board, the board may invest funds coming under its control pursuant to this part in the same manner as permitted for investment of funds belonging to the state or held by the state treasurer.

(2) Funds from several or all accounts may be combined for investment, and any interest earned shall be prorated and credited to the various contributing accounts on the basis of the amounts thereof invested, calculated according to an average periodic balance or other generally accepted accounting principle. Such proration must be calculated at least once a year or upon a specific request made to the board.

(3) All securities purchased by the board as an investment remain in the custody of the state treasurer until the same are sold, exchanged, retired, or mature and are paid.

History: En. Sec. 23, Ch. 620, L. 1983.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Investments, Title 17, ch. 6, part 2.

17-5-1642. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a liability or obligation or a pledge of the faith and credit of the state but are payable solely from revenues or funds of the board generated or received for purposes of this part. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

History: En. Sec. 24, Ch. 620, L. 1983.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

17-5-1643. Sale or exchange of municipal securities. (1) Notwithstanding any law applicable to or constituting any limitation on the maximum rate of interest per year payable on bonds or notes or to annual interest cost to maturity of money borrowed or received upon issuance of bonds or notes, every local government unit is authorized to contract to pay interest on or an interest cost per year for money borrowed from the board and evidenced by its municipal securities purchased by the board without regard to any statutory limitations as to rate of interest per year payable or as to annual interest cost to maturity of money borrowed by the local government unit. Every local government unit is authorized to contract with the board with respect to the loan or purchase, and the contract must contain the terms and conditions of such loan or purchase. Every local government unit is authorized to pay fees and charges required to be paid to the board for its services.

(2) Notwithstanding any law applicable to or constituting any limitation on the sale of bonds or notes except the limitation on amount of bonded indebtedness, any local government unit may sell bonds or notes to the board by private negotiated sale, without limitation as to denomination. The bonds or notes may be fully registered or registerable as to principal only or in bearer form or may bear interest at the rate or rates, all in accordance with this section. The bonds or notes may be evidenced in the manner and may contain other provisions not inconsistent with this part and may be sold to the board without advertisement at the price or prices as may be determined, all as

provided in the proceedings of the governing body of the local government unit pursuant to which the bonds or notes are authorized to be issued. The governing body of the local government unit may provide for the exchange of coupon bonds for fully registered bonds and of fully registered bonds for coupon bonds and for the exchange of any such bonds after issuance for bonds of larger or smaller denominations, all in the manner provided in the proceedings authorizing their issuance. The bonds in changed form or denominations must be exchanged for the surrendered bonds in the same aggregate principal amounts and in such manner that no overlapping interest is paid and the bonds in changed form or denominations bear interest at the same rate or rates and mature on the same date or dates as the bonds for which they are exchanged. If any exchange is made under this subsection, the bonds surrendered by the holders at the time of the exchange must be canceled. The exchange may be made only at the request of the holders of the bonds to be surrendered. The local government unit may require all expenses incurred in connection with the exchange to be paid by the holders.

History: En. Sec. 25, Ch. 620, L. 1983.

17-5-1644. Care and custody of bonds purchased by the board. The board may:

(1) enter into agreements or contracts with a bank, trust company, or financial institution, inside or outside the state, as may be necessary, desirable, or convenient, in the opinion of the board, for rendering services in connection with:

(a) the care, custody, or safekeeping of municipal bonds or other investments held or owned by the board pursuant to this part;

(b) the payment or collection of amounts payable as to principal or interest; and

(c) the delivery to the board of municipal bonds or other investments purchased by it or sold by it pursuant to this part;

(2) pay the cost of those services; and

(3) also, in connection with any of the services to be rendered by a bank, trust company, or financial institution as to the custody and safekeeping of its municipal bonds or investments, require security in the form of collateral bonds, surety agreements, or security agreements in such form and amount as, in the opinion of the board, is necessary or desirable.

History: En. Sec. 26, Ch. 620, L. 1983.

17-5-1645. Insurance or guaranty. The board may obtain, from a department or agency of the United States or a nongovernmental insurer, insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal on bonds or notes issued by the board or on municipal bonds, bond anticipation notes, or notes of local government units purchased or held by the board.

History: En. Sec. 27, Ch. 620, L. 1983.

17-5-1646. Default in payment. If the board or local government unit defaults in the payment of principal or interest on an issue of notes or bonds after they become due, whether at maturity or upon call for redemption, and the default continues for 30 days, or if the board or local government unit fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of notes or bonds, the holders of 25% of the aggregate principal amount of the outstanding notes or bonds of that issue have the right, upon proper application to a court of competent jurisdiction, to have a trustee appointed to represent the holders of those notes or bonds for the purposes provided in this part.

History: En. Sec. 28, Ch. 620, L. 1983.

17-5-1647. Powers and duties of trustee on default. (1) A trustee appointed under 17-5-1646 may:

(a) by civil action enforce all rights of the noteholders or bondholders, including the right to require the board or local government unit to collect rates, charges, and other fees and to collect interest and amortization payments on bonds and notes held by them adequate to carry out a pledge of or an agreement as to the rates, charges, and other fees and of the interest and amortization payments, and to require the board or local government unit to carry out any other agreements with the holders of the notes or bonds and to perform their duties under this part;

(b) bring a civil action upon the notes or bonds;

(c) by civil action require the board or local government unit to account as if it were the trustee of an express trust for the holders of the notes or bonds;

(d) by civil action enjoin anything that may be unlawful or in violation of the rights of the holders of the notes or bonds;

(e) declare all the notes or bonds due and payable and, if all defaults are made good, then, with the consent of the holders of 25% of the principal amount of the outstanding notes or bonds, annul the declaration and its consequences.

(2) The trustee, in addition to the powers stated in subsection (1), has all the powers necessary for the exercise of functions specifically set out or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(3) Before declaring the principal of notes or bonds due and payable, the trustee must give 30 days' notice in writing to the governor, the attorney general, and the board or local government unit defaulting.

History: En. Sec. 29, Ch. 620, L. 1983.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

Powers of trustees, Title 72, ch. 34, part 3.

17-5-1648. Exemption from execution and sale. All property of the board, other than its revenues or funds received pursuant to this part, is exempt from levy and sale by virtue of an execution, and no execution or other judicial process may issue against such property. A judgment against the board constitutes a charge or lien upon such property.

History: En. Sec. 30, Ch. 620, L. 1983.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

17-5-1649. Annual audit. The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds.

History: En. Sec. 31, Ch. 620, L. 1983; amd. Sec. 2, Ch. 308, L. 1985; amd. Sec. 3, Ch. 94, L. 1987.

Cross-References

Audit costs and contracts, Title 5, ch. 13, part 4.

Department of Commerce — bank examiners, 32-1-211.

17-5-1650. Annual report. By December 31 of each year, the board shall publish a financial report for distribution to the governor, the legislature, and the public. Distribution to the legislature is accomplished by providing two copies to the office of the legislative fiscal analyst, two copies to the legislative council, and a copy to a legislator on request. The report must include a statement of the board's current financial position with respect to its activities under this part, a summary of its activities pursuant to this part during the previous year (including a listing of the local governmental securities purchased by the board, a listing of the bonds and notes sold by the board, and a summary of the performance of any other investments of the board's funds received under this part), an estimate of the levels of activities for the next year, and a comparison of the activities during the previous year with the estimates of those activities that were made in the previous annual report.

History: En. Sec. 32, Ch. 620, L. 1983; amd. Sec. 4, Ch. 94, L. 1987; amd. Sec. 23, Ch. 112, L. 1991; amd. Sec. 20, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 in first sentence, after "legislature", deleted "as provided in 5-11-210" and inserted second sentence regarding distribution to the Legislature; and made minor changes in style.

17-5-1651. Limitations on board's power. Under this part the board may not:

(1) make loans of money to any person, firm, or corporation other than a local government unit or purchase securities issued by any person, firm, or corporation other than a local government unit as provided in this part;

(2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or manner in the conduct of any private or commercial banking business, or act as a savings bank or savings and loan association;

(3) be or constitute a bank or trust company within the jurisdiction or under the control of the state banking board, the department of commerce, or the comptroller of the currency of the United States department of the treasury;

(4) be or constitute a bank, banker, or dealer in securities within the meaning of or subject to the provisions of any securities, securities exchange, or securities dealers law of the United States or of this state or of any other state.

History: En. Sec. 33, Ch. 620, L. 1983.

Parts 17 through 20 reserved

Part 21
Crossover Refunding Bonds

Part Cross-References
Refunding bonds, Title 17, ch. 5, part 3.

17-5-2101. Definitions. As used in this part, the following definitions apply:

(1) "Bonds" means crossover refunding bonds.

(2) "Crossover date" means the date the proceeds of crossover refunding bonds are pledged to the payment of the obligations to be refunded.

(3) "Governing body" means the board or body that exercises the legislative power of the public body.

(4) "Public body" means any political subdivision of the state and includes but is not limited to a county, city, town, or school district.

History: En. Sec. 1, Ch. 171, L. 1987.

17-5-2102. Crossover refunding bonds authorized. (1) Any public body authorized to issue refunding obligations may issue bonds pursuant to this part without regard to the limitations contained in any other law relating to:

(a) the establishment of an escrow account for the obligations to be refunded;

(b) the giving of a notice of redemption for the obligations to be refunded and redeemed; or

(c) the application of the proceeds of the refunding obligations.

(2) The proceeds of bonds, less any proceeds applied to payment of costs of issuance or refunding, must be deposited in a sinking fund account irrevocably appropriated to the payment of principal of and interest on the refunding obligations until the crossover date. The sinking fund account must be maintained as an escrow account with a suitable financial institution within or outside the state and amounts in it must be invested in securities that are direct obligations of the United States or on which the payment of the principal and interest is guaranteed by the United States. In the resolution authorizing the issuance of the bonds, the governing body may pledge to their payment any source of payment of the obligations to be refunded. In the case of general obligation bonds, property taxes must be levied and appropriated to the sinking fund account in the amounts needed, together with estimated investment income from money in the sinking fund account and any other revenues available upon discharge of the obligations to be refunded, to pay when due the principal of and interest on the bonds. Funds pledged to the credit of the sinking fund for the obligations to be refunded and not required on the crossover date for the payment of principal, premium, or interest on the obligations to be refunded may be appropriated by the public body to the sinking fund account for the bonds.

(3) The public body may pay the reasonable costs and expenses of issuing bonds and of establishing and maintaining the escrow account.

(4) On the crossover date, obligations refunded pursuant to this part are no longer considered outstanding for purposes of any debt limitation if the provisions of subsection (5) are met.

(5) The securities in the escrow account must mature or be callable at the option of the holder on such date, bearing interest at such rate, and payable on such dates as necessary to provide sufficient funds, in addition to any cash retained in the escrow account, to pay when due:

(a) the interest that will accrue on each refunded obligation to its maturity or redemption date, if called for redemption;

(b) the principal of each refunded obligation at maturity or on the redemption date; and

(c) any redemption premium.

History: En. Sec. 2, Ch. 171, L. 1987.

Cross-References

County finance — bonds, Title 7, ch. 7, part 22.

County refunding general obligation bonds, Title 7, ch. 7, part 23.

Municipal bonds and indebtedness, Title 7, ch. 7, part 42.

Municipal refunding general obligation bonds, Title 7, ch. 7, part 43.

School district and county school bonds, Title 20, ch. 9, part 4.

Part 22

Bond Fees

17-5-2201. Fee for issuance of bonds. Except for issuers of general obligation bonds which are payable solely by general fund revenues, each state bond issuer shall, upon issuance of the bonds, pay 30 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit.

History: En. Sec. 13, Ch. 190, L. 1987.

CHAPTER 6

DEPOSITS AND INVESTMENTS

Part 1 — Deposits

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17-6-320 reserved.
17-6-321. Audits.
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17-6-323. Repealed.
17-6-324. Rulemaking authority.
17-6-325. Preference of Montana labor.
17-6-326 through 17-6-330 reserved.
17-6-331. Establishment of a Montana economic development fund.

Part 4 — Microbusiness Development Act

17-6-401. Short title.
17-6-402. Legislative findings and purpose.
17-6-403. Definitions.
17-6-404 and 17-6-405 reserved.
17-6-406. Microbusiness finance program — powers and duties of department.
17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations.
17-6-408. Certification of microbusiness development corporations.
17-6-409. Authority to accept funds — statutory appropriation — funding authorization.
17-6-410 reserved.
17-6-411. Microbusiness advisory council — appointment of members — organization — nonvoting legislative consulting panel.

Part 1
Deposits

Part Cross-References

Deposit of public funds by county, city, or town, 7-6-201 through 7-6-212.

17-6-101. Deposit of funds in hands of state treasurer. (1) Under the direction of the board of investments, the state treasurer shall deposit public money in the treasurer's possession and under the treasurer's control in solvent banks, building and loan associations, savings and loan associations, and credit unions located in the state, except as otherwise provided by law, subject to national supervision or state examination.

(2) If needed financial services are not available through solvent banks, building and loan associations, savings and loan associations, and credit unions located in the state, the state treasurer may deposit public money in out-of-state financial institutions subject to national supervision.

(3) The state treasurer shall deposit funds in banks, building and loan associations, savings and loan associations, and credit unions in amounts that may be designated by the board of investments and shall withdraw deposits when instructed to by the board of investments.

(4) When money has been deposited under the board of investments and in accordance with the law, the state treasurer is not liable for loss on account of any deposit occurring from any cause other than the treasurer's own neglect or fraud.

(5) The state treasurer shall withdraw all deposits or any part of the deposits from time to time to pay and discharge the legal obligations of the state presented to the treasurer in accordance with the law.

(6) The state treasurer may contract with a financial institution to provide general depository banking services. The cost of contracting for banking services is statutorily appropriated, as provided in 17-7-502, from the general fund.

History: En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974; R.C.M. 1947, 79-301(part); amd. Sec. 10, Ch. 421, L. 1985; amd. Sec. 2, Ch. 107, L. 1993; amd. Sec. 1, Ch. 131, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 107 inserted (6) allowing the State Treasurer to contract with a financial institution to provide general depository banking services and statutorily appropriating contracting costs from the general fund; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 131 inserted (2) allowing the deposit of public money in out-of-state financial institutions under certain circumstances; and made minor changes in style.

Cross-References

State Treasurer — general duties, 17-1-111.

Securities lending program, 17-1-113.

Giving security for deposit prohibited — exceptions, 32-1-447.

Authority to receive state deposits, 32-3-401.

17-6-102. Insurance on deposits. (1) Deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration may not be made unless the bank, building and loan association, savings and loan association, or credit union first delivers to the state treasurer or deposits in trust with some solvent bank, as security therefor, bonds or other obligations of the kinds listed in 17-6-103, having a market value equal to at least 50% of the amount of the deposits in excess of the amount insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustee's receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, successors in office, and the state of Montana and the form of receipt and the trustee have been approved by the board of investments.

(2) Any bank, building and loan association, savings and loan association, or credit union pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The substituted

collateral must conform to 17-6-103 and have a market value at least sufficient for compliance with subsection (1). If the substituted securities are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository financial institution a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository financial institution.

History: **En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974; R.C.M. 1947, 79-301(2), (4); amd. Sec. 2, Ch. 158, L. 1979; amd. Sec. 11, Ch. 421, L. 1985; amd. Sec. 29, Ch. 10, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 10 in (1), in first sentence, deleted reference to Federal Savings and Loan Insurance Corporation; and made minor changes in style.

Cross-References

Giving security for deposit prohibited — exceptions, 32-1-447.

Federal Deposit Insurance Corporation, Title 32, ch. 1, part 6.

State-chartered building and loan association — equality of rights, 32-2-111.

Credit unions — insurance on share accounts, 32-3-611.

17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration;

(i) federal housing administration; and

(j) federal home loan mortgage corporation;

(4) securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(5) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(6) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of the subdivision or when the revenues pledged to the payment of the bonds are derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenues equal to at least 125% of the average annual principal and interest due on all bonds payable from the revenues during the outstanding term of the bonds;

(7) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(8) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. Subject to rules prescribed by the department of commerce, the bonds and other obligations made eligible for investment in 32-1-424(3)(a) and 7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(9) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

(10) undertaking or guarantees issued by a surety company authorized to do business in the state;

(11) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

(12) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

(13) bonds issued pursuant to Title 90, chapter 6, part 1;

(14) revenue bonds issued by any unit of the university system of the state of Montana; and

(15) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow.

History: Ap. p. Sec. 4, Ch. 298, L. 1973; amd. Sec. 2, Ch. 160, L. 1975; amd. Sec. 1, Ch. 92, L. 1977; Sec. 79-307, R.C.M. 1947; Ap. p. Sec. 2, Ch. 5, Ex. L. 1933; amd. Sec. 2, Ch. 37, L. 1935; re-en. Sec. 5309.36, R.C.M. 1935; amd. Sec. 109, Ch. 431, L. 1975; Sec. 35-145, R.C.M. 1947; R.C.M. 1947, 35-145, 79-307; amd. Sec. 3, Ch. 158, L. 1979; amd. Sec. 1, Ch. 185, L. 1979; amd. Sec. 1, Ch. 437, L. 1979; amd. Sec. 5, Ch. 540, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 62, L. 1985; amd. Sec. 4, Ch. 57, L. 1987; amd. Sec. 56, Ch. 370, L. 1987; amd. Sec. 1, Ch. 137, L. 1989; amd. Sec. 2, Ch. 201, L. 1989.

Cross-References

Deposit security, 7-6-207.

Investment of certain money in county warrants, 7-6-2701.

Call for payment of warrants drawing interest, 7-6-4502.

Investment of municipal money in city or town warrants, 7-6-4603.

Authorization for additional indebtedness for water or sewer systems, 7-7-108.

County general obligation bonds, Title 7, ch. 7, part 22.

Municipal general obligation bonds, Title 7, ch. 7, part 42.

Municipal revenue bonds, Title 7, ch. 7, part 44.

Public obligations as authorized security, 17-5-1123.

Surety defined, 28-11-401.

What real property may be mortgaged — debts secured, 71-1-201.

Trust indenture considered to be mortgage on real property, 71-1-305.

17-6-104. Interest on deposits — conformity with federal law. (1) The board of investments may require the payment of quarterly annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks, building and loan associations, savings and loan associations, credit unions, and the board of investments. The rate must be fixed semiannually during the months of July and January of each year.

(2) The interest requirements on deposits of public funds made under the laws of the state of Montana or otherwise by county or city treasurers or town clerks may not at any time be in violation of any act of the congress of the United States or of any rule or regulation of the federal reserve system, federal home loan bank system, or the federal deposit insurance corporation, national credit union administration, or any other fiscal agency of the United States of which the banks, building and loan associations, savings and loan associations, or credit unions of this state may be members or debtors.

History: (1)En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974; Sec. 79-301, R.C.M. 1947; (2)En. Sec. 1, Ch. 104, L. 1937; amd. Sec. 2, Ch. 14, L. 1974; Sec. 79-302, R.C.M. 1947; R.C.M. 1947, 79-301(part), 79-302; amd. Sec. 6, Ch. 540, L. 1979; amd. Sec. 12, Ch. 421, L. 1985; amd. Sec. 30, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 near middle of (2) deleted reference to Federal Savings and Loan Insurance Corporation; and made minor changes in style.

Cross-References

Banks may join federal reserve bank, 32-1-373.

Claims — order of payment — priorities, 32-1-534.

17-6-105. State treasurer as treasurer of state agencies — deposits of money. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit all money, credits, evidences of indebtedness, and securities either:

(a) in banks, building and loan associations, savings and loan associations, or credit unions located in the city or town in which the agencies and institutions are situated, if there is a qualified bank, building and loan association, savings and loan association, or credit union in the city or town as designated by the state treasurer with the approval of the board of investments; or

(b) with the state treasurer.

(3) Each bank, building and loan association, savings and loan association, or credit union shall pledge securities sufficient to cover 50% of the deposits at all times.

(4) The deposits must be made in the name of the state treasurer, must be subject to withdrawal at his option, and must draw interest as other state money, in accordance with the provisions of this part.

(5) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by the agency, and all the funds must be deposited and invested in accordance with the covenants notwithstanding any provision of this chapter.

(6) Except as otherwise provided by law, all money, credits, evidences of indebtedness, and securities received by a state agency or institution must be deposited either with the state treasurer or in a depository approved by the state treasurer each day when the accumulated amount of coin and currency requiring deposit exceeds $100 or total collections exceed $500. All money, credits, evidences of indebtedness, and securities collected must be deposited at least weekly.

(7) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the department may require any money received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer.

History: (1) thru (6)En. Sec. 1, Ch. 112, L. 1921; re-en. Sec. 192, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1931; re-en. Sec. 192, R.C.M. 1935; amd. Sec. 9, Ch. 147, L. 1963; amd. Sec. 2, Ch. 298, L. 1973; amd. Sec. 3, Ch. 14, L. 1974; amd. Sec. 4, Ch. 286, L. 1977; Sec. 79-306, R.C.M. 1947; (7)En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971, amd. Sec. 50, Ch. 326, L. 1974; Sec. 82-110, R.C.M. 1947; R.C.M. 1947, 79-306, 82-110(5); amd. Sec. 4, Ch. 158, L. 1979; amd. Sec. 13, Ch. 421, L. 1985; amd. Sec. 1, Ch. 339, L. 1991.

Cross-References

Unified investment program — general provisions, 17-6-201.

Investment funds — general provisions, 17-6-202.

Part 2
Investments

Part Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

17-6-201. Unified investment program — general provisions. (1) The unified investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation provided that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Except as provided in this chapter, another agency may not invest state funds, unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502.

Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.

(9) (a) The director of the department of administration annually may prepare a statewide cost allocation plan to distribute program costs incurred by state agencies that are funded through the general fund to the programs served by the agencies. Except as provided in subsection (9)(b), the cost to an agency of providing services to a program funded through an account in the state special revenue fund, as defined in 17-2-102, must be deducted by the board from the account's investment earnings according to the statewide cost allocation plan. Amounts deducted by the board must be credited to the general fund.

(b) A deduction for program costs, as provided in subsection (9)(a), may not be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202.

History: (1), (2), (5) thru (7)En. Sec. 5, Ch. 298, L. 1973; amd. Sec. 1, Ch. 203, L. 1977; Sec. 79-308, R.C.M. 1947; (3), (4)En. 82A-204 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 90, Ch. 326, L. 1974; Sec. 82A-204, R.C.M. 1947; R.C.M. 1947, 79-308, 82A-204(4); amd. Sec. 1, Ch. 395, L. 1981; amd. Sec. 11, Ch. 281, L. 1983; amd. Sec. 19, Ch. 677, L. 1983; amd. Sec. 2, Ch. 183, L. 1985; amd. Sec. 3, Ch. 418, L. 1985; amd. Sec. 1, Ch. 158, L. 1987; amd. Sec. 1, Ch. 335, L. 1987; amd. Sec. 12, Ch. 581, L. 1987; amd. Sec. 1, Ch. 291, L. 1991; amd. Sec. 1, Ch. 46, L. 1993; amd. Sec. 1, Ch. 331, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 46 inserted (2)(b) prohibiting investment in private corporate capital stock; inserted (3)(d) prohibiting a direct loan to an individual borrower; in (4), at end of second sentence, inserted "unless otherwise provided by law"; inserted (6)(d) allowing expenditure of funds needed to cover costs of necessary property repairs; and made minor changes in style.

Chapter 331 in (4), in first sentence before "authority", substituted "primary" for "sole" and at beginning of second sentence inserted exception clause; inserted (8) relating to Board reimbursement to the Department of administrative costs not covered by payback funds; in (9)(a) substituted "subsection (9)(b)" for "subsection (8)(b)"; in (9)(b) substituted "subsection (9)(a)" for "subsection (8)(a)"; and made minor changes in style. Amendment effective July 1, 1993.

Style changes in (1)(a), (1)(c), (2)(a), (3)(a), (5)(e), and (7) were slightly different in the two chapters. In each case, the codifier chose the more appropriate of the two.

Cross-References

Accurate accounting records and interaccount loans, 17-2-107.

U.C.C. — secured transactions — sales of accounts, contract rights, and chattel paper, Title 30, ch. 9.

Proceedings in foreclosure suits, 71-1-222.

17-6-202. Investment funds — general provisions. (1) For each treasury fund account into which state funds are segregated by the department of administration pursuant to 17-2-106, individual transactions and totals of all investments shall be separately recorded to the extent directed by the department.

(2) However, the securities purchased and cash on hand for all treasury fund accounts not otherwise specifically designated by law or by the provisions of a gift, donation, grant, legacy, bequest, or devise from which the fund

account originates to be invested shall be pooled in an account to be designated "treasury cash account" and placed in one of the investment funds designated in 17-6-203. The share of the income for this account shall be credited to the general fund.

(3) If, within the list in 17-6-203 of separate investment funds, more than one investment fund is included which may be held jointly with others under the same separate listing, all investments purchased for that separate investment fund shall be held jointly for all the accounts participating therein, which shall share all capital gains and losses and income pro rata.

History: En. Sec. 6, Ch. 298, L. 1973; amd. Sec. 7, Ch. 540, L. 1977; R.C.M. 1947, 79-309(part).

Cross-References

Accurate accounting records and interaccount loans, 17-2-107.

17-6-203. Separate investment funds. Separate investment funds shall be maintained as follows:

(1) the nonexpendable trust funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in sections 2 and 10, Article X, of the 1972 Montana constitution. The principal and any part thereof of each and every fund constituting the Montana nonexpendable trust fund type shall be subject to payment at any time when due under the statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrol officers' retirement system described in Title 19, chapter 6;

(b) the public employees' retirement system described in Title 19, chapter 3;

(c) the game wardens' retirement system described in Title 19, chapter 8;

(d) the teachers' retirement system described in Title 19, chapter 20; and

(e) the industrial accident insurance program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-102;

(4) the fish and wildlife mitigation trust fund established by 87-1-611;

(5) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions.

(6) a fund consisting of coal severance taxes allocated thereto under section 5, Article IX, of the Montana constitution; the principal of this trust

fund shall be permanent; in the event the legislature appropriates any part of the principal of this fund by vote of three-fourths of the members of each house, such liquidation may create a gain or loss in the principal; and

(7) such additional investment funds as may be expressly required by law or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source.

History: Ap. p. Sec. 6, Ch. 298, L. 1973; amd. Sec. 7, Ch. 540, L. 1977; Sec. 79-309, R.C.M. 1947; Ap. p. Sec. 12, Ch. 70, L. 1929; re-en. Sec. 5668.30, R.C.M. 1935; amd. Sec. 21, Ch. 147, L. 1963; amd. Sec. 37, Ch. 100, L. 1973; Sec. 79-1212, R.C.M. 1947; R.C.M. 1947, 79-309(part), 79-1212; amd. Sec. 12, Ch. 281, L. 1983; amd. Sec. 4, Ch. 418, L. 1985; amd. Sec. 6, Ch. 445, L. 1987; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Disposal of severance taxes, 15-35-108.

Coal severance tax bonds — renewable resource development, Title 17, chapter 5, part 7.

17-6-204. Investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision having funds which are available for investment and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its treasurer to remit such funds to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

(2) A separate account, designated by name and number for each such participant in the fund, shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report shall be furnished to each participant having a beneficial interest in the pooled investment fund, showing the changes in investments made during the preceding month. Details of any investment transaction shall be furnished to any participant upon request.

(3) The principal and accrued income, and any part thereof, of each and every account maintained for a participant in the pooled investment fund shall be subject to payment at any time from the fund upon request. Accumulated income shall be remitted to each participant at least annually.

(4) No order or warrant shall be issued upon any account for a larger amount than the principal and accrued income of the account to which it applies, and if any such order or warrant is issued, the participant receiving it shall reimburse the excess amount to the fund from any funds not otherwise appropriated, and the state treasurer shall be liable under his official bond for any amount not so reimbursed.

History: En. Sec. 8, Ch. 298, L. 1973; R.C.M. 1947, 79-311.

Cross-References

Maintenance of fund and account records and interfund loans, 17-2-105.

Accurate accounting records and interaccount loans, 17-2-107.

17-6-205 and 17-6-206 reserved.

17-6-207. Investment of state cabinsite sales. The board of investments may purchase from approved lenders contracts for deed or mortgages for cabinsites on state trust land for the trust and legacy fund.

History: En. Sec. 2, Ch. 488, L. 1991.

17-6-208 through 17-6-210 reserved.

17-6-211. Preference to in-state investment firms — commitment agreement with board of housing. (1) The board of investments shall endeavor to direct its portion of the state's investment business to those investment firms and/or financial institutions which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

(2) The board may enter into a commitment agreement with the board of housing at the time of an issue of bonds or notes by the board of housing providing for the purchase at a specified future date, not to exceed 15 years from the date of the issue, of all or any portion of the amount of mortgage loans purchased with the proceeds of the issue. The board of investments may charge reasonable fees for any commitment and may agree to purchase the mortgage loans on terms that in the judgment of the board of investments provide a fair market rate of return to the purchasers.

History: En. Sec. 7, Ch. 298, L. 1973; amd. Sec. 1, Ch. 92, L. 1974; amd. Sec. 1, Ch. 228, L. 1974; amd. Sec. 1, Ch. 316, L. 1977; R.C.M. 1947, 79-310; amd. Sec. 1, Ch. 81, L. 1979; amd. Sec. 1, Ch. 180, L. 1979; amd. Sec. 2, Ch. 395, L. 1981; amd. Sec. 1, Ch. 358, L. 1983; amd. Sec. 1, Ch. 360, L. 1983; amd. Sec. 1, Ch. 387, L. 1983; amd. Sec. 20, Ch. 677, L. 1983; amd. Sec. 5, Ch. 418, L. 1985; amd. Sec. 14, Ch. 421, L. 1985.

Cross-References

Investment of fund, 19-2-504.

Financial administration of money, 19-20-501.

U.C.C. — commercial paper, Title 30, ch. 3.

U.C.C. — investment securities, Title 30, ch. 8.

Authority to receive state deposits, 32-3-401.

Mortgages of real property, Title 71, ch. 1, part 2.

Board of Housing — financing of housing, Title 90, ch. 6, part 1.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

17-6-212. State purchase of general fund warrants. (1) The state hereby reserves to itself a preference right, prior to the right of any person, company, or corporation, to purchase state general fund warrants issued with funds under the control of the board of investments and subject to investment.

(2) When the board of investments has under its control any funds subject to investment which in its judgment it would be advantageous to have invested in state general fund warrants and there are not sufficient funds in the state general fund to pay warrants issued against the fund at the time they are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, designating the fund or funds to be so invested and fixing the amount or amounts. It shall also give notice to the state auditor of the investment to be made by the treasurer, designating the fund or funds to be invested and the amounts.

(3) The auditor shall attach to or stamp, write, or print upon each general fund warrant thereafter issued, until warrants totaling the amounts so designated have been issued, a notice that the state will exercise its preference right to purchase the warrant.

(4) The state treasurer shall thereafter when the warrant is presented to him pay it out of the proper fund as designated by the board, and the warrant so purchased shall be registered as other state warrants and bear interest as provided by law.

(5) When the designated amounts have been invested, the state treasurer shall notify the board of investments, which shall thereupon issue orders upon the proper funds addressed to the state auditor for warrants to be issued in favor of the treasurer.

History: En. Sec. 89, Ch. 147, L. 1909; re-en. Sec. 1912, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1927; re-en. Sec. 1912, R.C.M. 1935; amd. Sec. 33, Ch. 326, L. 1974; R.C.M. 1947, 79-1101.

Cross-References

Warrants, Title 17, ch. 8, part 3.

17-6-213. Redemption of bonds before maturity. (1) The board of investments shall permit any school district, town, city, or county to pay and redeem one or more of its bonds held by the state for the credit of any fund under the investment administration of the board of investments at any time before maturity.

(2) In calculating the unpaid interest accrued on any bond or bonds at the time of payment and redemption, interest for a fractional month shall be calculated and collected for a full month.

(3) Payment and redemption of bonds shall be made at the office of the state treasurer unless the bonds by their own terms and provisions are made payable at some other place and payment at his office would be disadvantageous to the redemptioner. When bonds have been so paid and redeemed, the state treasurer shall effectually cancel the bonds and the attached coupons by perforation or otherwise and mail to the proper treasurer together with his receipt.

(4) This section does not authorize or permit any school district, town, city, or county to issue refunding bonds for the purpose of paying and redeeming any bond or bonds held by the state before the optional or redeemable date therein stated or to grant the right to pay any bond or bonds held by the state before the optional or redeemable date from the proceeds of refunding bonds.

History: En. Sec. 2, Ch. 33, L. 1907; re-en. Sec. 2202, Rev. C. 1907; amd. Sec. 91, Ch. 147, L. 1909; re-en. Sec. 1916, R.C.M. 1921; amd. Sec. 1, Ch. 70, L. 1925; amd. Sec. 1, Ch. 3, L. 1929; re-en. Sec. 1916, R.C.M. 1935; amd. Sec. 36, Ch. 326, L. 1974; R.C.M. 1947, 79-1105.

Cross-References

Redemption of bonds, 7-7-2207.

Redemption of bonds held by state, 7-7-4267.

Redemption of bonds — optional method, 17-5-105.

Redemption of bonds — investment of debt service fund money, 20-9-441.

17-6-214 through 17-6-220 reserved.

17-6-221. Handling securities — custody of mortgages and repurchase agreements. (1) Securities may be placed in safekeeping with banks subject to national supervision or Montana state examination, and a safekeeping receipt may be accepted in lieu of the actual securities.

(2) Custody and control of repurchase agreements and mortgages shall be accomplished by the receipt of a confirmation of purchase.

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R.C.M. 1921; Cal. Pol. C. Sec. 452; re-en. Sec. 174, R.C.M. 1935; amd. Sec. 8, Ch. 147, L. 1963; amd. Sec. 1, Ch. 152, L. 1971; amd. Sec. 1, Ch. 269, L. 1973; R.C.M. 1947, 79-201(8).

Cross-References

Examination and supervision by department, 32-1-211.

17-6-222. Repealed. Sec. 1, Ch. 304, L. 1979.

History: En. Sec. 15, Ch. 70, L. 1929; re-en. Sec. 5668.33, R.C.M. 1935; amd. Sec. 38, Ch. 100, L. 1973; amd. Sec. 10, Ch. 298, L. 1973; R.C.M. 1947, 79-1215.

Part 3

Montana In-State Investment

17-6-301. Short title. This part may be cited as the "Montana In-State Investment Act of 1983".

History: En. Sec. 1, Ch. 677, L. 1983.

17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(5) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(6) "Loan participation" means loans or portions thereof bought from a financial institution and does not include the purchase of debentures issued by a capital company.

(7) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(8) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the people of Montana, either directly or indirectly.

(9) "Montana economy" means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

(10) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund.

History: En. Sec. 2, Ch. 677, L. 1983; amd. Sec. 1, Ch. 408, L. 1985; amd. Sec. 1, Ch. 124, L. 1987; amd. Sec. 57, Ch. 370, L. 1987; amd. Sec. 13, Ch. 581, L. 1987; amd. Sec. 5, Ch. 589, L. 1991.

17-6-303. Purpose of the coal tax trust fund. The people of Montana establish that the intent of the permanent coal tax trust fund, as created by Article IX, section 5, of the Montana constitution, is:

(1) to compensate future generations for the loss of a valuable and depletable resource and to meet any economic, social, and environmental impacts caused by coal development not otherwise provided for by other coal tax sources; and

(2) to develop a stable, strong, and diversified economy which meets the needs of Montana residents both now and in the future while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution.

History: En. Sec. 1, I.M. No. 95, approved Nov. 2, 1982.

17-6-304. Use of the coal tax trust fund for economic development. Objectives for investment of the permanent coal tax trust fund are to diversify, strengthen, and stabilize the Montana economy and to increase Montana employment and business opportunities while maintaining and improving a clean and healthful environment.

History: En. Sec. 2, I.M. No. 95, approved Nov. 2, 1982.

17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy — report by board. (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111.

History: En. Sec. 3, I.M. No. 95, approved Nov. 2, 1982; amd. Sec. 1, Ch. 338, L. 1985; amd. Sec. 6, Ch. 418, L. 1985; amd. Sec. 14, Ch. 16, L. 1991; amd. Sec. 6, Ch. 589, L. 1991; amd. Sec. 16, Ch. 787, L. 1991; amd. Sec. 21, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 in (4), after "shall", inserted "include a", after "report" deleted "biennially to the legislature", and after "section" inserted "as a part of the information required by 17-7-111".

17-6-306. Repealed. Sec. 19, Ch. 589, L. 1991.

History: En. Sec. 3, Ch. 677, L. 1983; amd. Sec. 2, Ch. 338, L. 1985; amd. Sec. 7, Ch. 445, L. 1987; amd. Sec. 17, Ch. 787, L. 1991.

17-6-307. Repealed. Sec. 18, Ch. 581, L. 1987.

History: En. Sec. 4, Ch. 677, L. 1983.

17-6-308. Authorized investments. (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

(3) The board shall allow the Montana board of science and technology development, provided for in 2-15-1818, to administer $15.5 million of the permanent coal tax trust fund for seed capital project loans and $8.1 million of the permanent coal tax trust fund for research and development project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1997, for seed capital project loans and beyond June 30, 1995, for research and development project loans. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

History: En. Sec. 5, Ch. 677, L. 1983; amd. Sec. 7, Ch. 418, L. 1985; amd. Sec. 3, Ch. 640, L. 1985; amd. Sec. 22, Ch. 316, L. 1989; amd. Sec. 1, Ch. 251, L. 1991; amd. Sec. 7, Ch. 589, L. 1991; amd. Secs. 2, 12, Ch. 594, L. 1991; amd. Sec. 2, Ch. 331, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 331 in (3), in first sentence, increased allowable seed capital loan money from $7.5 million to $15.5 million and increased allowable research and development loan money from $5.1 million to $8.1 million and in second sentence extended authority from June 30, 1994, to June 30, 1997, for seed capital loans and to June 30, 1995, for research and development loans. Amendment effective July 1, 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

17-6-309. Investment preferences. In deciding which of several investments of equal or comparable security and return are to be made when sufficient funds are not available to fund all possible investments, the board shall give preference to the business investments that:

(1) assist employee-owned enterprises in providing new jobs or in preserving existing jobs for Montana residents or in otherwise contributing to the long-term benefit of the Montana economy;

(2) are for locally owned enterprises that are either expanding or establishing new operations;

(3) provide jobs that will be substantially filled by current Montana residents as opposed to providing jobs that will be filled by nonresidents coming into the state to fill such jobs;

(4) maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

(5) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or

(6) benefit small- and medium-sized businesses as defined in rules adopted by the board.

History: **En. Sec. 6, Ch. 677, L. 1983; amd. Sec. 2, Ch. 408, L. 1985.**

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

17-6-310. Repealed. Sec. 3, Ch. 46, L. 1993.

History: **(1)En. Sec. 3(3), I.M. No. 95, approved Nov. 2, 1982; (2)En. Sec. 7, Ch. 677, L. 1983; amd. Sec. 2, Ch. 124, L. 1987; amd. Sec. 8, Ch. 589, L. 1991; amd. Secs. 4, 12, Ch. 594, L. 1991; amd. Sec. 5, Ch. 12, Sp. L. January 1992; amd. Sec. 4, Ch. 354, L. 1993.**

17-6-311. Limitation on size of investments. (1) Except as provided in subsections (2) and (3), no investment may be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 1% of the permanent coal tax trust fund.

(2) Subsection (1) does not limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company; however, the total amount of such debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.

History: **En. Sec. 8, Ch. 677, L. 1983; amd. Sec. 4, Ch. 640, L. 1985; amd. Sec. 3, Ch. 124, L. 1987; amd. Sec. 9, Ch. 589, L. 1991.**

17-6-312. State participation in loans. (1) State participation in any loan to a business enterprise, except for a loan guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.

(2) The purchase of debentures issued by a capital company is not a loan participation and is not subject to subsection (1).

History: **En. Sec. 9, Ch. 677, L. 1983; amd. Sec. 4, Ch. 124, L. 1987.**

17-6-313. Prior commitment of funds. The board may authorize the commitment of funds to financial institutions and capital companies pursuant to rules adopted by the board, but the determination as to credit with respect to individual investments must be made by the financial institution and the board or the capital company and the board.

History: **En. Sec. 10, Ch. 677, L. 1983; amd. Sec. 5, Ch. 124, L. 1987.**

17-6-314. Rate of return. In calculating the rate of return for any Montana investment to be made from the permanent coal tax trust fund, the board shall consider the long-term benefit to the Montana economy and the additional service fee discount provided for in 17-6-319.

History: **En. Sec. 11, Ch. 677, L. 1983; amd. Sec. 10, Ch. 589, L. 1991.**

17-6-315. Repealed. Sec. 19, Ch. 589, L. 1991.

History: **En. Sec. 12, Ch. 677, L. 1983; amd. Sec. 5, Ch. 640, L. 1985; amd. Sec. 1, Ch. 102, L. 1987.**

17-6-316 and 17-6-317 reserved.

17-6-318. Job credit interest rate reduction for small business loan participations. (1) A borrower who uses the proceeds of a small business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created over a 2-year period to employ a Montana resident. The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last completed fiscal year. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the average weekly wage to a maximum of two times the average weekly wage; or

(b) is less than the average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the average wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) No job credit will be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and make application in writing, through its financial institution, to the board when the loan is delivered to the board or not later than 45 days after the first and second anniversary dates of the loan.

History: En. Sec. 17, Ch. 589, L. 1991.

17-6-319. Incentive to financial institution for small business loan participation. A financial institution that originates a small business loan no larger than 0.05% of the balance of the Montana permanent coal tax trust fund at the end of the last completed fiscal year is entitled to an additional service fee in the form of a discount equal to 0.5% of the board's participation in the loan. The board shall consider the additional service fee discount to the financial institution as part of the rate of return provided in 17-6-314.

History: En. Sec. 18, Ch. 589, L. 1991.

17-6-320 reserved.

17-6-321. Audits. (1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.

(2) The board's books and records must be audited once each fiscal year by or at the direction of the legislative auditor. The actual cost of this audit must be paid from the board's funds.

History: En. Sec. 13, Ch. 677, L. 1983; amd. Sec. 3, Ch. 308, L. 1985.

Cross-References

Audit costs and contracts, Title 5, ch. 13, part 4.

Department of Commerce — bank examiners, 32-1-211.

17-6-322. Report. The board shall include in its annual report a section on the results of the previous year's operations of the investment in the Montana economy from the permanent coal tax trust fund, as required in 17-6-305, including:

(1) financial statements audited by independent auditors;

(2) a summary report of loan activity; and

(3) a comparison of the performance of the investments in the Montana economy in relation to the purposes contained in 17-6-303.

History: En. Sec. 14, Ch. 677, L. 1983; amd. Sec. 1, Ch. 264, L. 1987; amd. Sec. 1, Ch. 94, L. 1989; amd. Sec. 11, Ch. 589, L. 1991.

Cross-References

General duties of boards, 37-1-131.

17-6-323. Repealed. Sec. 3, Ch. 94, L. 1989.

History: En. Sec. 15, Ch. 677, L. 1983.

17-6-324. Rulemaking authority. The board may adopt rules to implement the provisions of this part and 17-6-211(2). Rules adopted by the board may include definitions of small- and medium-sized businesses, a method of committing funds to financial institutions, types of service fees, and types of investments to be made. The board may also adopt procedural rules to govern its proceedings.

History: En. Sec. 16, Ch. 677, L. 1983; amd. Sec. 8, Ch. 418, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

17-6-325. Preference of Montana labor. Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

History: En. Sec. 3, Ch. 653, L. 1985; amd. Sec. 7, Ch. 561, L. 1987.

17-6-326 through 17-6-330 reserved.

17-6-331. Establishment of a Montana economic development fund. A Montana economic development fund is created. A portion of the interest income from the permanent coal tax trust fund created in 17-6-203(6) shall be deposited in the fund as determined by the legislature. Monies, if any, appropriated by the legislature from the economic development fund shall be used only for programs consistent with the objectives in 17-6-304.

History: En. Sec. 4, I.M. No. 95, approved Nov. 2, 1982; amd. Sec. 8, Ch. 445, L. 1987.

Part 4

Microbusiness Development Act

Part Compiler's Comments

Repeal of Audit and Evaluation of Microbusiness Finance Program: Section 4, Ch. 88, L. 1993, repealed sec. 9, Ch. 602, L. 1991, which required an audit and evaluation of the microbusiness finance program and a report to the Legislature. Repealer effective March 10, 1993.

17-6-401. Short title. This part may be cited as the "Microbusiness Development Act".

History: En. Sec. 1, Ch. 602, L. 1991.

17-6-402. Legislative findings and purpose. (1) The legislature finds and declares that:

(a) it is the policy of the state to foster and encourage economic development within the state in order to promote the general welfare of the people;

(b) no program exists by which the state encourages and assists in the creation, development, and financing of businesses with fewer than 10 full-time equivalent employees and gross revenues of less than $500,000 a year, which represent a significant component of and potential for growth in the state's economy; and

(c) neither the public sector nor the private sector currently satisfies the financial needs of these businesses.

(2) The purpose of this part is to create a program to encourage and assist in the creation, development, and financing of businesses with fewer than 10 full-time equivalent employees and gross revenues of less than $500,000 a year.

(3) The process of certification of microbusiness development corporations and selection among competing proposals for development loans must be open and competitive and allow access to the competition to all interested communities and organizations and must provide for selecting for award of development loans those projects that are best qualified according to the criteria established under 17-6-406 through 17-6-408.

History: En. Sec. 2, Ch. 602, L. 1991.

17-6-403. Definitions. As used in this part, the following definitions apply:

(1) "Certified community lead organization" means an organization that has sponsored community certification under the certified communities program of the department.

(2) "Certified microbusiness development corporation" means a microbusiness development corporation certified pursuant to 17-6-408.

(3) "Council" means the microbusiness advisory council established in 17-6-411.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Development loan" means money loaned to a certified microbusiness development corporation by the department for the purpose of making microbusiness loans under the provisions of this part.

(6) "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state to provide training,

technical assistance, and access to capital for the startup or expansion of qualified microbusinesses.

(7) "Microbusiness loan" means a loan made from or guaranteed by a revolving loan fund contributed to by the microbusiness finance program.

(8) "Program" means the microbusiness finance program established in 17-6-406.

(9) "Qualified microbusiness" means a business enterprise located in the state that produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenues of less than $500,000.

(10) "Revolving loan fund" means a fund required to be established by a certified microbusiness development corporation that receives a development loan.

History: En. Sec. 3, Ch. 602, L. 1991.

17-6-404 and 17-6-405 reserved.

17-6-406. Microbusiness finance program — powers and duties of department. There is a microbusiness finance program administered by the department. The department shall adopt rules to implement the provisions of this part, including but not limited to:

(1) establishing criteria and procedures for certifying microbusiness development corporations;

(2) establishing criteria and procedures to select from competing development loan applications and to award development loans to certified microbusiness development corporations;

(3) establishing criteria and procedures to be followed by certified microbusiness development corporations that administer revolving loan funds supported by the program;

(4) determining the amount and method of computation and payment of interest rates charged to recipients of development loans and specifying amortization schedules and other terms and conditions for development loans as may be necessary;

(5) establishing criteria for determining nonperformance and declaring default in the administration of development loans and requiring the refund of defaulted development loan funds to the microbusiness development loan account;

(6) establishing criteria for satisfactory performance in development loan administration to determine eligibility for renewal of development loans or for additional development loans;

(7) establishing guidelines for maximum and minimum interest rates that may be charged by certified microbusiness development corporations on microbusiness loans; and

(8) dividing the state into not more than 12 multicounty service regions within each of which not more than one microbusiness development corporation may be funded at any time. However, a corporation that is funded as a statewide microbusiness development corporation under 17-6-408 may offer specialized services to constituents within regions having a funded regional microbusiness development corporation.

History: En. Sec. 4, Ch. 602, L. 1991; amd. Sec. 1, Ch. 88, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 88 in (4), at end, deleted "However, the rate of interest may not be less than 3% a year." Amendment effective March 10, 1993.

17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations. (1) There is in the state special revenue fund a microbusiness development loan account into which the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, and money received in repayment of the principal of development loans must be deposited. The department may make development loans from the account in amounts not to exceed $250,000 a loan to a certified microbusiness development corporation.

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which all interest received on development loans, service charges or fees received from certified microbusiness development corporations, grants, donations, and private or public income must be deposited. Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(3) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if the applicant meets the performance criteria established by the department.

(4) To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) geographic representation of all regions of the state, including both urban and rural communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with its plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with its plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

(5) Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed $20,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed $20,000;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed $20,000, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed $20,000.

(6) Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

(7) Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio of at least $1 from other sources for each $6 from the program. These contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

(8) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department that are consistent with the purposes of and with rules promulgated to implement this part.

(9) (a) Unless subject to federal law or rule, each certified microbusiness development corporation that receives a development loan under this part shall pay the cost of an audit of its operations to be conducted at least once every 2 years. The department shall designate an auditor to conduct the audit.

(b) If an audit is performed under a requirement of federal law or rule, the department shall waive the audit required in subsection (9)(a) with respect to all issues addressed by the federal audit report. However, the department may require an audit of matters that are not, in the department's judgment, addressed by the federal report—for example, verification of compliance with requirements specific to the program, such as job-generation standards and reporting.

(10) A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be

required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on the receivables of the corporation receiving the loan.

History: En. Sec. 5, Ch. 602, L. 1991; amd. Sec. 2, Ch. 88, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 88 in (3), near middle after "additional loan", deleted "after 1 year following approval of the previous loan"; in (5)(a), near beginning after "private", substituted "funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses" for "grants"; in (7), in first sentence before "development", substituted "contribute cash from other sources to leverage and secure" for "match" and after "program" deleted "with contributions to their revolving loan fund from other sources" and at beginning of second sentence inserted "contributions provided by the corporation must be" and increased ratio amount of $1 to $3 to ratio amount of $1 to $6; and made minor changes in style. Amendment effective March 10, 1993.

17-6-408. Certification of microbusiness development corporations. The department may certify:

(1) a microbusiness development corporation when it determines that the corporation:

(a) has developed a viable plan for providing training, access to financing, and technical assistance for qualified microbusinesses;

(b) has broad-based community support in a designated multicounty region of the state, as reflected, for example, by the membership of its board of directors; and

(c) has an adequate source of operating capital; or

(2) a statewide microbusiness development corporation when the department determines that the corporation meets the conditions under subsections (1)(a) and (1)(c) and, in addition:

(a) has a viable plan to provide specialized services to constituents throughout the state; and

(b) does not preempt or duplicate efforts of microbusiness development corporations within local communities.

History: En. Sec. 6, Ch. 602, L. 1991; amd. Sec. 3, Ch. 88, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 88 in (2) substituted "subsections (1)(a) and (1)(c)" for "subsection (1)"; deleted former (2)(c) that read: "(c) obtains written indications of support from local development organizations in the communities in which it plans to offer its services"; and made minor changes in style. Amendment effective March 10, 1993.

17-6-409. Authority to accept funds — statutory appropriation — funding authorization. (1) The department may accept grants, donations, and other private and public income, including payments of interest on loans made by the department under the provisions of this part and fees charged by the department. The department shall deposit all money received under this section in the microbusiness finance program administrative account established in 17-6-407.

(2) The money in the microbusiness finance program administrative account is statutorily appropriated to the department, as provided in 17-7-502, for the purposes stated in this part.

History: En. Sec. 8, Ch. 602, L. 1991.

17-6-410 reserved.

17-6-411. Microbusiness advisory council — appointment of members — organization — nonvoting legislative consulting panel. (1) Subject to the provisions of subsection (5), there is a microbusiness advisory council composed of 13 members appointed by the governor from a list of candidates submitted by the director of the department after the department provides by rule for a process of requesting and receiving nominations from the public. No more than seven of the council members may live in the same congressional district as the congressional districts existed on December 31, 1990. At least three members must be representatives of certified community lead organizations. At least two of the three community representatives shall reside in communities with a population of less than 15,000. At least three members must be owners of qualified microbusinesses as defined in 17-6-403. At least two members must have expertise in administering revolving loan funds that primarily serve microbusinesses. The membership must include representation of minorities, women, and low-income persons.

(2) (a) At the first meeting of the council, members shall draw lots to determine six members whose terms expire June 30, 1992, and seven members whose terms expire June 30, 1993.

(b) Members serving terms beginning after the expiration of the terms set in subsection (2)(a) shall serve 2-year terms.

(c) A member appointed to fill an unexpired term shall serve until the term expires.

(3) The members of the council shall elect a chairman and other officers as they determine necessary.

(4) The council shall meet at least once each quarter and more often as the chairman or a majority of the members determine necessary.

(5) (a) There is a legislative consulting panel of four members. The panel:

(i) shall meet with the council, participate in deliberations of the council, and advise the council in performance of its functions under subsection (7) but may not vote on any motion before the council; and

(ii) consists of:

(A) two representatives, including one from each party, appointed by the speaker of the house of representatives; and

(B) two senators, including one from each party, appointed by the committee on committees.

(b) The members:

(i) must be appointed on or before the 10th day of each regular session of the legislature and shall serve until the convening of the next regular session of the legislature. If a vacancy on the panel occurs during a legislative interim, that vacancy must be filled in the same manner as the original appointment.

(ii) are entitled to compensation in the same manner as members of the council, as provided in subsection (6).

(6) Members of the council are not entitled to compensation for their services except for reimbursement of expenses as provided in 2-18-501 through 2-18-503.

(7) The function of the council is to advise the department regarding the creation, operation, and maintenance of the program and the policies and operations affecting the certified microbusiness development corporations.

History: **En. Sec. 7, Ch. 602, L. 1991.**

CHAPTER 7

BUDGETING AND APPROPRIATIONS

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Chapter Cross-References

Receipt and transmission of donations from sale of collegiate license plates, 61-3-465, 61-3-467.

Part 1

Budget Systems and Program Plans

Part Cross-References

General appropriation bills, Art. V, sec. 11(4), Mont. Const.

No appropriation to private sector, Art. V, sec. 11(5), Mont. Const.

State to have balanced budget, Art. VIII, sec. 9, Mont. Const.

Requirement of fiscal notes with committee reports, 5-4-201.

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Fiscal analyst to analyze executive budget, 5-12-302.

Budget systems of cities and towns, Title 7, ch. 6.

Budget systems of counties, Title 7, ch. 6.

Dedication of state revenue, Title 17, ch. 1, part 5.

Equipment Safety Commission budgets, 61-2-208.

17-7-101. Short title. This part shall be known and may be cited as the "Budget Act".

History: En. Sec. 1, Ch. 205, L. 1919; re-en. Sec. 294, R.C.M. 1921; re-en. Sec. 294, R.C.M. 1935; amd. Sec. 29, Ch. 326, L. 1974; R.C.M. 1947, 79-1001.

17-7-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government, except for purposes of capital projects administered by the department of administration, for which institutions are treated as one department and university units as one system.

(3) "Approved long-range building program budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds appropriated to a capital project within an agency to increase the appropriation of another capital project within that agency or to obtain financing to expand a project with funds that were not available for consideration by the legislature.

(4) "Approving authority" means:

(a) the governor or his designated representative for executive branch agencies;

(b) the chief justice of the supreme court or his designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(5) "Budget amendment" means a legislative appropriation to increase spending authority for the special revenue fund, proprietary funds, or unrestricted subfund, contingent on total compliance with all budget amendment procedures.

(6) "Current funding level" means that level of funding required to maintain operations and services at the level authorized by the previous legislature, after adjustment for inflation.

(7) "Effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained.

(8) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(9) "Modified funding level" means the current funding level as adjusted to reflect workload increases, the provision of new services, or changes in authorized funding.

(10) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(11) "Priority listing" means a ranking of proposed expenditures in order of importance.

(12) "Program" means a combination of resources and activities designed to achieve an objective or objectives.

(13) "Program size" means the magnitude of a program such as the size of clientele served, the volume of service in relation to the population or area, etc.

(14) "Program size indicator" means a measure to indicate the magnitude of a program.

(15) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(16) "University system unit" means the board of regents of higher education, office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, the bureau of mines and geology with central offices at Butte, the

fire services training school at Great Falls, the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula, or the community colleges at Miles City, Glendive, and Kalispell.

History: En. 79-1012.1 by Sec. 1, Ch. 460, L. 1975; R.C.M. 1947, 79-1012.1; amd. Sec. 1, Ch. 596, L. 1983; amd. Sec. 5, Ch. 787, L. 1991.

17-7-103. Governor chief budget officer — appointment of budget director. (1) The governor shall be the chief budget officer of the state and shall appoint a budget director who shall hold office at the pleasure of the governor and perform the duties assigned by law or by the governor.

(2) The budget director may appoint a chief assistant and may employ such other personnel as may be necessary to carry out the provisions of this chapter.

History: (1)En. Sec. 1, Ch. 158, L. 1959; amd. Sec. 1, Ch. 101, L. 1969; amd. Sec. 1, Ch. 42, L. 1974; amd. Sec. 1, Ch. 282, L. 1974; amd. Sec. 8, Ch. 61, L. 1977; Sec. 79-1012, R.C.M. 1947; (2)En. Sec. 5, Ch. 158, L. 1959; amd. Sec. 5, Ch. 282, L. 1974; Sec. 79-1016, R.C.M. 1947; R.C.M. 1947, 79-1012, 79-1016(part).

Cross-References

General duties of Budget Director, 17-1-131.

17-7-104 through 17-7-106. Repealed. Sec. 1, Ch. 432, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

17-7-104 through 17-7-106. En. 79-1012.2, 79-1012.3, 79-1020 by Secs. 2, 3, 5, Ch. 460, L. 1975; R.C.M. 1947, 79-1012.2, 79-1012.3, 79-1012.5.

17-7-107 through 17-7-110 reserved.

17-7-111. Agency program budgets — form distribution and contents. (1) In the preparation of a state budget, the budget director shall, not later than July 1 in the year preceding the convening of the legislature, distribute to all state offices and departments, including the judicial branch and the legislative branch, the proper forms necessary for the preparation of budget estimates. These forms must be prescribed by the budget director to procure the information required by subsection (2).

(2) The agency budget requests, when completed by the budget office, must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary for current level expenditures and for each modification request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained in the summary by fund and, when applicable, organizational unit.

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(c) a detailed schedule of receipts, by accounting entity within each fund, indicating classification and source of funds;

(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented must include the following:

(i) a statement of agency goals and objectives and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives. The goals and objectives must contain a list of duties prioritized by the department director to reflect the director's opinion concerning the importance of the duties assigned to the agency by law. Any discretionary programs established by the agency that are not required by law must also be enumerated.

(ii) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program; and

(iii) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category; and

(e) other information the budget director feels is necessary for the preparation of a budget.

(3) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by department, institution, agency, or branch by funding source, with a description of each proposed project; and

(b) the proposed pay plan schedule for all executive branch employees, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(4) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (4). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(5) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.

History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; R.C.M. 1947, 79-1013(part); amd. Sec. 1, Ch. 666, L. 1983; amd. Sec. 1, Ch. 343, L. 1985; amd. Sec. 4, Ch. 5, Sp. L. July 1992; amd. Sec. 3, Ch. 20, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 20 inserted (5) regarding provision of individual income tax data to the Budget Director; and made minor changes in style.

17-7-112. Submission deadline. (1) It is the duty of each department, agency, and office, including the Montana university system, to submit the information required under 17-7-111 to the budget director on or before September 1 in the even year preceding the convening of the legislature. The department of justice shall submit information received from counties concerning the state's share of county attorney salaries.

(2) Between August 15 and September 30 in the year preceding the convening of the legislature, the director must submit each state agency's budget request required under 17-7-111(2) to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information during the month of September and that allows each office to maintain a reasonable staff workflow.

(3) If any department, institution, university unit, or agency fails to present the information within the time specified in this section, the budget director shall note that fact in the budget submitted to the governor and the budget director shall prepare and submit to the legislative fiscal analyst and the governor by October 30 a budget request on behalf of the department, institution, university unit, or agency, based upon the budget director's studies of the operations, plans, and needs of the department, institution, university unit, or agency.

(4) The proposed pay plan schedule required by 17-7-111(3) must be submitted to the legislative fiscal analyst no later than November 15 in the year preceding the convening of the legislature.

History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; R.C.M. 1947, 79-1013(part); amd. Sec. 1, Ch. 290, L. 1981; amd. Sec. 2, Ch. 666, L. 1983; amd. Sec. 2, Ch. 332, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 332, in (1) inserted last sentence that read: "The department of justice shall submit information received from counties concerning the state's share of county attorney salaries"; and made minor changes in style.

17-7-113. Inquiries and investigations by budget director. The budget director or his designated representative shall make such further inquiries and investigations as he considers necessary as to any item included in the report and estimates furnished by any department, agency, or institution. In making such investigations, he shall be allowed his travel expenses as provided for in 2-18-501 through 2-18-503, as amended, in visiting any institution or department in the state.

History: **En. Sec. 5, Ch. 158, L. 1959; amd. Sec. 5, Ch. 282, L. 1974; amd. Sec. 18, Ch. 453, L. 1977; R.C.M. 1947, 79-1016(part).**

Cross-References

Public employees' travel, meals, and lodging, 2-18-501 through 2-18-503.

17-7-114. Criteria for acceptance and expenditure of certain nonstate and nonfederal money. (1) Before an agency may expend money from a nonstate or nonfederal source that would be deposited in the state special revenue fund that is restricted by law or by the terms of a contract, a trust agreement, or a donation of $5,000 or more that is accompanied by a written agreement, the approving authority for the agency shall submit to the legislative finance committee a copy of the agreement and a certification containing:

(a) the specific service that will be provided;

(b) the proposed duration of the agreement; and

(c) a statement concerning the degree to which the agreement may result in an ascertainable present or future commitment for general fund support.

(2) The legislative fiscal analyst shall review the agreement and certification to ensure that:

(a) the proposed use of the money has not been specifically disapproved by the legislature;

(b) the terms of the agreement are not contrary to state law; and

(c) the agreement will not result in an ascertainable present or future commitment for general fund support.

(3) The legislative fiscal analyst shall present a written report of each review that is conducted to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that considered the proposed agreement and certification, the legislative fiscal analyst shall submit the committee's written report to the approving authority.

(4) Upon receipt of the legislative finance committee's report, the approving authority may approve or deny the proposed agreement, taking into consideration the legislative finance committee's report.

(5) If an emergency occurs that poses a serious threat to the life, health, or safety of the public or if the legislative fiscal analyst determines that a review is not necessary, the legislative fiscal analyst may waive the written review and the legislative finance committee's written report provided for by this section. Upon receipt of the waiver, the approving authority may approve or deny the proposed agreement upon completion of the certification. The waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report. All other requirements and standards remain in effect. After the waiver, the legislative fiscal analyst may complete the written review.

(6) Nothing in this section confers any authority on the legislative finance committee to approve or deny the proposed agreement.

History: En. Sec. 1, Ch. 433, L. 1993.

Compiler's Comments

Effective Date: Section 7, Ch. 433, L. 1993, provided: "[This act] is effective July 1, 1993."

17-7-115 through 17-7-120 reserved.

17-7-121. Preliminary budget preparation and submission to governor and governor-elect. (1) Upon receipt of the completed forms and other available data and information, the budget director shall examine the same for the purpose of determining the necessity of the disbursements and funds requested and shall, on or before December 15 in the year preceding the convening of the legislature, submit in writing to the governor and to the governor-elect, if one there be, a preliminary budget for the ensuing biennium containing the detailed information hereinafter required to be set forth in the budget to be submitted by the governor to the legislature.

(2) If so requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, such estimates, comments, and recommendations as the governor-elect may wish to make, and this section of the budget shall be transmitted to the legislature without change. It is the duty of the governor-elect in recommending changes to show a balance between proposed disbursements and anticipated receipts.

History: En. Sec. 3, Ch. 158, L. 1959; amd. Sec. 3, Ch. 282, L. 1974; R.C.M. 1947, 79-1014.

17-7-122. Submission of budget to legislature. (1) The governor shall, following the receipt of the preliminary budget from the budget director, have prepared a budget for the ensuing biennium and shall submit the budget to each member of the legislature at the time of the convening of the legislature.

(2) Legislative branch requests must be included in the budget submitted by the governor without changes.

(3) Judicial branch requests must be included in the budget submitted by the governor, but expenditures above current level funding need not be part of the balanced financial plan pursuant to 17-7-123.

History: (1)En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974; Sec. 79-1015, R.C.M. 1947; (2)En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; Sec. 79-1013, R.C.M. 1947; R.C.M. 1947, 79-1015(part), 79-1013(part); amd. Sec. 1, Ch. 657, L. 1991.

17-7-123. Form of executive budget. The budget submitted must set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, which plan must consist of:

(1) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements, classifying receipts and disbursements contained therein by fund and, when applicable, organizational unit;

(2) an analysis of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(3) a detailed analysis of receipts by accounting entity within fund indicating classification and source of funds;

(4) a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information presented must include the following:

(a) a summary of departmental goals and objectives and a statement of goals and objectives for each program of the department;

(b) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the current funding level and the modified funding level, if any, for each department and each program of the department; and

(c) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category and other matters considered necessary; and

(5) detailed recommendations for the state long-range building program. Each recommendation must be presented by department, institution, agency, or branch by funding source, with a description of each proposed project. An appropriation measure must be presented by project, source of funding, and department, agency, institution, or branch for which the project is primarily intended.

History: En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974; R.C.M. 1947, 79-1015(part); amd. Sec. 2, Ch. 596, L. 1983; amd. Sec. 22, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 at beginning of (4)(a) substituted "summary" for "statement"; at beginning of (4)(b) inserted "actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and" and at end, after "department", deleted remainder of former (4) through (4)(d) that read: "The funding levels must show the number of employees who were given a pay grade change under the pay schedule adopted pursuant to 2-18-303 and the net cost to the agency for such grade changes for the biennium. The changes must be listed in tabular form by:

(i) position description;

(ii) grade assigned prior to the completed fiscal year;

(iii) grade assigned during the completed fiscal year;

(iv) grade assigned during the current fiscal year;

(v) recommended grade for the ensuing biennium;

(vi) dollar difference for the upgrade or downgrade for each position; and

(vii) net cost to the agency for grade changes;

(c) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by program;

(d) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by disbursement category"; in (4)(c), after "containing", deleted "further" and after "governor" substituted "for the ensuing biennium by program and disbursement category and other matters considered" for "should he deem it"; deleted (6) that read: "(6) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions thereto by department, institution, or agency of the state"; and made minor changes in style.

Cross-References

Long-range building program, 17-7-204.

17-7-124. Additional budget data. In addition to the budget required in 17-7-123, the governor shall prepare and make available on request:

(1) a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information available must include the following:

(a) a statement of departmental goals and objectives and a statement of goals and objectives for each program of the department; and

(b) schedules showing the number of employees who were given a pay grade change under the pay schedule implemented pursuant to 2-18-303 and the net cost to the agency for the grade changes for the biennium. The changes must be listed in tabular form by:

(i) position description;

(ii) grade assigned prior to the completed fiscal year;

(iii) grade assigned during the completed fiscal year;

(iv) grade assigned during the current fiscal year;

(v) recommended grade for the ensuing biennium;

(vi) dollar difference for the upgrade or downgrade for each position; and

(vii) net cost to the agency for grade changes.

(2) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions by department, institution, or agency of the state; and

(3) information submitted by agencies as required by 17-7-111.

History: En. Sec. 23, Ch. 349, L. 1993.

17-7-125 through 17-7-130 reserved.

17-7-131. Legislative action. The presiding officers of the house of representatives and of the senate shall promptly refer the budgets and budget bills to the proper committees. The budget bill for the maintenance of the agencies of state government and the state institutions shall be based upon the budget and proposed budget bill so submitted. The legislature may amend the proposed budget bill, but it may not amend the proposed budget bill so as to affect either the obligations of the state or the payment of any salaries required to be paid by the constitution and laws of the state.

History: En. Sec. 6, Ch. 205, L. 1919; re-en. Sec. 299, R.C.M. 1921; amd. Sec. 4, Ch. 167, L. 1933; re-en. Sec. 299, R.C.M. 1935; Sec. 79-1006, R.C.M. 1947; amd. and redes. 79-1015.1 by Sec. 30, Ch. 326, L. 1974; R.C.M. 1947, 79-1015.1.

Cross-References

Compensation, Art. V, sec. 5, Mont. Const.

Compensation, Art. VI, sec. 5, Mont. Const.

Terms and pay, Art. VII, sec. 7, Mont. Const.

Compensation determination, Title 2, ch. 18, part 3.

17-7-132. Right of officers to appear on consideration of budget. The department of administration and representatives of the executive officers, agencies, and institutions of the state and other state agencies expending or applying for state moneys may and, when requested by either the house of representatives or the senate, shall appear and be heard with respect to any budget bill.

History: En. Sec. 7, Ch. 205, L. 1919; re-en. Sec. 300, R.C.M. 1921; re-en. Sec. 300, R.C.M. 1935; Sec. 79-1007, R.C.M. 1947; amd. and redes. 79-1015.2 by Sec. 31, Ch. 326, L. 1974; R.C.M. 1947, 79-1015.2.

17-7-133 through 17-7-137 reserved.

17-7-138. Operating budget. (1) Expenditures by a state agency must be made in substantial compliance with an operating budget approved by an approving authority. Substantial compliance means that a first-level category in the operating budget may not be exceeded by more than 5%. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and any statement of intent adopted as part of a bill.

(2) The expenditure of money appropriated in the general appropriations act to the university system units, as defined in 17-7-102, is contingent upon approval of an operating budget by October 1 of each fiscal year. All other requirements in this section apply to the university system.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget and any approved changes on the statewide budget and accounting system. Forms used for changing an operating budget must reference the current, complete, and approved operating budget, show the proposed changes to the operating budget, and reference any other pending documents to change the operating budget.

History: En. Sec. 8, Ch. 787, L. 1991; amd. Sec. 1, Ch. 8, Sp. L. July 1992.

17-7-139. Program transfers. Unless prohibited by law, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. The transfer may not exceed 5% of the total agency appropriation, excluding statutory appropriations, administrative authorizations, and budget amendments. All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer.

History: En. Sec. 9, Ch. 787, L. 1991.

17-7-140. Reduction in spending. (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in spending for the following may not be directed by the governor:

(a) payment of interest and principal on state debt;
(b) the legislative branch;
(c) the judicial branch;
(d) the school BASE funding program, including special education; and
(e) salaries of elected officials during their terms of office.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than 2% of the general fund appropriations for the second fiscal year of the biennium. In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid, and anticipated reversions.

(b) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-18-107, the budget director shall notify the revenue oversight committee of the estimated amount. Within 20 days of notification, the revenue oversight committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue oversight committee prior to certifying a projected general fund budget deficit to the governor.

History: En. Sec. 10, Ch. 787, L. 1991; amd. Sec. 1, Ch. 5, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993.

Compiler's Comments

Name Change — Short Form Amendment: Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

17-7-141. Audit costs. Amounts appropriated for audits conducted under Title 5, chapter 13, may be transferred between fiscal years. Agencies shall reserve enough money in each fund to pay for audit costs and to the maximum extent allowable under federal regulations shall charge audit costs to federal funds.

History: En. Sec. 11, Ch. 787, L. 1991.

Part 2

Long-Range Building Program and Budget

Part Cross-References

Compensation, terms, and officers, Title 5, ch. 17, part 1.

General obligation bonds and notes, Title 17, ch. 5, part 8.

17-7-201. Definitions of building and construction. In this part the following definitions apply:

(1) "Building" includes a:

(a) building, facility, or structure constructed or purchased wholly or in part with state moneys;

(b) building, facility, or structure at a state institution;

(c) building, facility, or structure owned or to be owned by a state agency, including the department of transportation.

(2) "Building" does not include a:

(a) building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

(b) facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

History: En. Sec. 14, Ch. 271, L. 1963; amd Sec. 1, Ch. 24, L. 1973; amd. Sec. 81, Ch. 326, L. 1974; R.C.M. 1947, 82-3314; amd. Sec. 3, Ch. 512, L. 1991.

17-7-202. Preparation of building programs and submission to department of administration. (1) Before July 1 of each even-numbered year, each state agency and institution shall submit to the department of administration, on forms furnished by the department, a proposed long-range building program, if any, for the agency or institution. Each agency and institution shall furnish any additional information requested by the department relating to the utilization of or need for buildings.

(2) The department shall examine the information furnished by each agency and institution and shall gather whatever additional information is necessary and conduct whatever surveys are necessary in order to provide a factual basis for determining the need for and the feasibility of the construction of buildings. The information compiled by the department shall be submitted to the governor before December 1 of each even-numbered year.

History: En. Sec. 15, Ch. 271, L. 1963; amd. Sec. 82, Ch. 326, L. 1974; R.C.M. 1947, 82-3315(1), (2).

Cross-References

Construction contracts — general provisions, 18-2-101 through 18-2-105.

17-7-203. Submission to legislature. During the first week of each regular legislative session, the governor shall submit to the legislature:

(1) the requests of all state agencies and institutions compiled in the form of a comprehensive, long-range proposed building program, including:

(a) the purpose for which each building would be used;

(b) the estimated cost of each building, including necessary land acquisition;

(c) the reasons given by the institution or agency for needing each building;

(d) a priority order recommended by the agency or institution for each building;

(e) the recommendation of the institution or agency as to when each building is needed;

(f) any comments of the governor;

(2) a building program proposed by the governor for the forthcoming biennium in the form of a capital construction budget, including:

(a) the purpose for which each building would be used;

(b) the estimated cost of each building and necessary land acquisition;

(c) the reasons for the governor's recommendation to construct each building during the forthcoming biennium;

(d) the proposed method of financing for each building;

(e) any long-range building plans;

(f) any changes in the law necessary to insure an effective, well-coordinated building program for the state.

History: En. Sec. 15, Ch. 271, L. 1963; amd. Sec. 82, Ch. 326, L. 1974; R.C.M. 1947, 82-3315(3).

17-7-204. Long-range building program. The executive budget for all state agencies shall include detailed recommendations for the state long-range building program presented in a priority listing. Each recommendation shall be presented by department, institution, agency, or branch by funding source, with a description of each proposed project, an explanation of the problem to be addressed by the proposed project, alternative methods of addressing the problem, the rationale for the selection of a particular alternative, and a projection of increased operating costs incident to the project for the next three bienniums.

History: **En. 79-1015.1 by Sec. 4, Ch. 460, L. 1975; R.C.M. 1947, 79-1012.4.**

Cross-References

Form of executive budget, 17-7-123.

Authority to construct buildings, 18-2-102.

Scheduling of state building program, 18-2-104.

17-7-205 through 17-7-210 reserved.

17-7-211. Expansion to be authorized. An existing capital project may not be expanded beyond the scope of the project approved by the legislature unless the expansion of the project is authorized by an approved long-range building program budget amendment.

History: **En. Sec. 13, Ch. 787, L. 1991.**

17-7-212. Reappropriation of capital projects. The remaining balances on capital projects previously approved by the legislature are reappropriated for the purposes of the original appropriation until the projects are completed.

History: **En. Sec. 14, Ch. 787, L. 1991.**

Part 3

Supplemental Appropriations, Encumbrances, and Reversions

Part Cross-References

Uniform accounting system and expenditure control, 17-1-102.

17-7-301. Authorization to expend during first year of biennium from appropriation for second year — proposed supplemental appropriation defined — limit on second-year expenditures. (1) A state department, institution, or agency of the executive branch desiring authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium shall submit a proposed supplemental appropriation to the governor through the budget director. The proposal submitted to the governor must include a plan for reducing expenditures in the second year of the biennium that allows the agency to contain expenditures within appropriations. If the governor finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other income will be insufficient for the operation and maintenance of the department, institution, or agency during the year for which the appropriation was made, the governor shall, after careful study and examination of the request and upon review of the recommendation of the budget director, submit the proposed supplemental appropriation to the legislative fiscal analyst.

(2) The plan for reducing expenditures required by subsection (1) is not required if the proposed supplemental appropriation is:

(a) due to an unforeseen and unanticipated emergency for fire suppression;

(b) requested by the superintendent of public instruction, in accordance with the provisions of 20-9-351, and is to complete the state's funding of guaranteed tax base aid, transportation aid, or equalization aid to elementary and secondary schools for the current biennium; or

(c) requested by the attorney general and:

(i) is to pay the costs associated with litigation in which the department of justice must provide representation to the state of Montana; or

(ii) in accordance with the provisions of 7-32-2242, is to pay costs for which the department of justice is responsible for confinement of an arrested person in a detention center.

(3) Upon receipt of the recommendation of the legislative finance committee pursuant to 17-7-311, the governor may authorize an expenditure during the first fiscal year of the biennium to be made from the appropriation for the second fiscal year of the biennium. Except as provided in subsection (2), the governor shall require the agency to implement the plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations.

(4) The department, institution, or agency may expend the amount authorized by the governor only for the purposes specified in the authorization.

(5) The governor shall report to the next legislature in a special section of the budget the amounts expended as a result of all authorizations granted by the governor and shall request that any necessary supplemental appropriation bills be passed.

(6) As used in this part, "proposed supplemental appropriation" means an application for authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium.

(7) (a) Except as provided in subsections (2) and (7)(b), an agency may not make expenditures in the second year of the biennium that, if carried on for the full year, will require a deficiency appropriation, commonly referred to as a "supplemental appropriation".

(b) An agency shall prepare and, to the extent feasible, implement a plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations. The approving authority is responsible for ensuring the implementation of the plan. If, in the second year of a biennium, mandated expenditures that are required by state or federal law will cause an agency to exceed appropriations or available funds, the agency shall reduce all nonmandated expenditures pursuant to the plan in order to reduce to the greatest extent possible the expenditures in excess of appropriations or funding. An agency may not transfer funds between fund types in order to implement a plan.

History: En. Sec. 1, Ch. 82, L. 1961; R.C.M. 1947, 79-1019; amd. Sec. 1, Ch. 11, Sp. L. January 1992; amd. Sec. 1, Ch. 357, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 357 inserted second sentence of (1) requiring the proposal to include a plan for reducing second-year expenditures; inserted (2) clarifying when the plan is not required; inserted second sentence of (3) requiring implementation of the plan; inserted (7) prohibiting certain supplemental appropriations; and made minor changes in style.

Cross-References

Appropriation and disbursement of money from the treasury, 17-8-101.

17-7-302. Encumbrance of fiscal yearend obligations. (1) Any valid obligation not paid within the fiscal year, including valid written interagency or intra-agency service agreements for systems development, shall be encumbered for payment thereof at the end of each fiscal year in the department of administration's accounts. Except as provided in subsection (2), an appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created.

(2) An appropriation may be encumbered by a written interagency or intra-agency agreement with the department for the alteration, repair, maintenance, or renovation of a building pursuant to the provisions of Title 18, chapter 2. If the appropriation is not encumbered by a valid obligation at the end of the next fiscal year, the appropriation reverts to the fund from which it was originally appropriated.

History: En. Sec. 3, Ch. 84, L. 1955; amd. Sec. 3, Ch. 127, L. 1961; amd. Sec. 2, Ch. 267, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 59-701.2; amd. Sec. 1, Ch. 544, L. 1979; amd. Sec. 1, Ch. 146, L. 1985; amd. Sec. 1, Ch. 60, L. 1987.

17-7-303. Reappropriation of encumbered obligations at end of each fiscal year. Purchase orders issued and accrued expenses approved by the department of administration shall be encumbered at the end of each fiscal year in the department of administration's accounts and are hereby reappropriated for the succeeding fiscal year.

History: En. Sec. 2, Ch. 84, L. 1955; amd. Sec. 1, Ch. 267, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 59-701.1.

17-7-304. *(Temporary)* **Disposal of unexpended appropriations.** (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, the bureau of mines and geology with central offices in Butte, and the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any

amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated. *(Terminates June 30, 1996—sec. 23, Ch. 787, L. 1991; sec. 5, Ch. 5, Sp. L. July 1992.)*

17-7-304. *(Effective July 1, 1996)* **Disposal of unexpended appropriations.** All money appropriated for any specific purpose must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

History: En. Sec. 2, H.B. 372, p. 16, L. 1895, not published in the codes; re-en. Sec. 304, R.C.M. 1921; re-en. Sec. 304, R.C.M. 1935; amd. Sec. 14, Ch. 147, L. 1963; Sec. 79-1011, R.C.M. 1947; amd. and redes. 79-1015.3 by Sec. 32, Ch. 326, L. 1974; R.C.M. 1947, 79-1015.3; amd. Sec. 6, Ch. 787, L. 1991; amd. Sec. 2, Ch. 5, Sp. L. July 1992; amd. Sec. 31, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 in 1996 version, in first sentence after "purpose", deleted "except those appropriated for the university system units listed in subsection (2)"; and made minor changes in style. Amendment effective June 30, 1996.

17-7-305. Supplemental appropriations for legislative agencies. Deficiency appropriations, commonly referred to as a "supplemental appropriation", for a legislative branch agency must be included in a separate appropriation bill and may not be included in the bill appropriating money for the operation of the legislature, commonly referred to as the "feed bill".

History: En. Sec. 3, Ch. 618, L. 1979.

17-7-306 through 17-7-310 reserved.

17-7-311. Proposed supplemental appropriation — procedure. (1) A proposed supplemental appropriation and all supporting documentation must be submitted to the legislative fiscal analyst. The governor may not approve a proposed supplemental appropriation until the governor receives the legislative finance committee's written report for that proposed supplemental appropriation unless:

(a) the report is not received within 90 calendar days from the date the proposed supplemental appropriation and supporting documentation were forwarded to the legislative finance committee, in which case the governor may approve the proposed supplemental appropriation; or

(b) there has been a waiver of the review and report requirements, as provided in subsection (4).

(2) The legislative fiscal analyst shall review each proposed supplemental appropriation submitted by the governor for compliance with statutory requirements and standards and to determine the expenditures that will be reduced in order to contain spending within legislative appropriations. The legislative fiscal analyst shall present a written report of this review to the legislative finance committee. Within 10 days after the legislative finance committee's consideration of the proposed supplemental appropriation, the legislative fiscal analyst shall submit the legislative finance committee's report to the governor.

(3) Upon receipt of the legislative finance committee's written report, the governor may approve or deny the proposed supplemental appropriation or

may return the proposed supplemental appropriation to the requesting agency for further information. If the governor has returned the proposed supplemental appropriation to the requesting agency and the requesting agency resubmits the proposed supplemental appropriation to the governor, all procedures provided in this section apply to the resubmitted proposed supplemental appropriation.

(4) (a) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive the written review and the legislative finance committee's written report required by this section. After a waiver, the legislative fiscal analyst may complete the written review.

(b) Upon receipt of the waiver, the governor may approve the proposed supplemental appropriation.

(c) A waiver affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the proposed supplemental appropriation. All other proposed supplemental appropriation requirements and standards remain in effect.

(5) Nothing in this part confers on the legislative finance committee authority to approve or deny a proposed supplemental appropriation.

History: En. Sec. 2, Ch. 11, Sp. L. January 1992; amd. Sec. 2, Ch. 357, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 357 at end of first sentence of (2) inserted "and to determine the expenditures that will be reduced in order to contain spending within legislative appropriations"; and made minor changes in style.

Part 4
Budget Amendments

Part Cross-References

Submission of budget amendments to Legislative Finance Committee and review by Legislative Fiscal Analyst, Title 5, ch. 12, part 4.

17-7-401. Repealed. Sec. 19, Ch. 787, L. 1991.

History: En. Sec. 1, Ch. 536, L. 1983; amd. Sec. 5, Ch. 224, L. 1989; amd. Sec. 15, Ch. 16, L. 1991.

17-7-402. Budget amendment requirements. (1) Except as provided in subsection (6), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend additional federal revenue, additional tuition collected by the Montana university system, additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies, Montana historical society enterprise revenue resulting from sales to the public, additional revenue deposited in funds, other than the general fund, from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91, or a new source of revenue that was not available for legislative consideration during the most recent legislative session open to that matter;

(b) by the approving authority, which contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority, for the expenditure of money in the state special revenue fund unless an emergency justifies the expenditure;

(d) by the approving authority, unless it will provide additional services;

(e) by the approving authority, for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter; or

(f) to extend beyond June 30 of the last year of any biennium.

(2) All budget amendments must itemize planned expenditures by fiscal year.

(3) Each budget amendment must be submitted by the approving authority to the budget director and the office of the legislative fiscal analyst.

(4) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is subject to the review process provided in 17-7-114 and is exempt from the requirements of this part.

(5) An appropriation that would usually be the subject of a budget amendment that is submitted to the legislature for approval during a legislative session may not include authority to spend money beyond the first fiscal year of the next biennium.

(6) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1).

History: En. Sec. 2, Ch. 536, L. 1983; amd. Sec. 3, Ch. 433, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 433 at beginning of (1) inserted exception clause; near beginning of (1)(a), after "spend", substituted present list of excepted budget amendment revenue for former language that read: "funds which were not available for legislative consideration"; inserted (4) clarifying that certain nonstate and nonfederal money is subject to review and exemption; inserted (5) disallowing spending authority beyond the first fiscal year of the next biennium; inserted (6) exempting a budget amendment required for matching funds; and made minor changes in style. Amendment effective July 1, 1993.

17-7-403. Budget amendment certification. In approving a budget amendment, the approving authority shall make the following certifications and in addition shall provide all other information required below as an integral part of the certification:

(1) The approving authority shall certify that:

(a) specific additional services will be provided as a result of the expenditures to be permitted under this budget amendment and shall also list each specific service to be so provided;

(b) the specific services to be provided under this budget amendment are necessary;

(c) the agency requesting this budget amendment has no other reasonable alternative available to provide the additional services. The certification must specifically include determinations by the approving authority that the agency cannot provide all or specific parts or amounts of the additional services with existing appropriations or that the agency is unable within its existing appropriations to fund all or part of the additional services from any source lawfully available to it.

(d) the budget amendment makes no ascertainable present or future significant commitment for increased general fund support.

(2) For budget amendments to spend money in the state special revenue fund, except money from nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, the approving authority shall certify that an emergency justifies the expenditure and shall state the specific nature of the emergency, the date on which the requesting agency became aware of the emergency, and the manner in which the requesting agency became aware of the emergency.

History: En. Sec. 3, Ch. 536, L. 1983; amd. Sec. 4, Ch. 433, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 433 in second sentence of (1)(c), after first "existing", substituted "appropriations" for "personnel because of the present required workload of existing personnel" and after second "existing" substituted "appropriations" for "funding"; deleted former (2) that read: "The approving authority shall include in its certification the specific criteria by which the effectiveness of the additional services will be evaluated and shall state a specific followup date on which the written evaluation of such services, using the listed criteria, will be presented to the legislative fiscal analyst. The written evaluation must be presented to the legislative fiscal analyst on or before that date"; near beginning of (2), after "fund", inserted "except money from nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation"; and made minor changes in style. Amendment effective July 1, 1993.

17-7-404. Budget amendment procedures. (1) Upon receiving a proposed budget amendment, the approving authority shall immediately forward a copy of the entire budget amendment to the legislative fiscal analyst.

(2) If the approving authority denies the request for a budget amendment, he shall immediately forward a notice of denial to the legislative fiscal analyst.

(3) If the approving authority intends to make certification of the budget amendment, immediately upon his completion of the certification he shall forward the certification and all supporting documentation to the legislative fiscal analyst. The approving authority may not approve the budget amendment until he receives the legislative finance committee's written report for that budget amendment unless:

(a) the report is not received within 90 calendar days from the date the certification and supporting documentation were forwarded to the finance committee, in which case the approving authority may approve the budget amendment; or

(b) there has been a waiver of review and report as provided in subsection (6).

(4) The legislative fiscal analyst shall review each proposed budget amendment that has been certified by the approving authority for compliance with statutory budget amendment requirements and standards and shall present a written report of this review to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that

considered the budget amendment, the legislative fiscal analyst shall submit the committee's report to the approving authority.

(5) Upon receipt of the legislative finance committee's written report, the approving authority may approve or deny the budget amendment or may return the budget amendment to the requesting agency for further information. If the approving authority has returned the budget amendment to the requesting agency and the requesting agency resubmits the budget amendment to the approving authority, all procedures set out in this section apply to the resubmitted budget amendment.

(6) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive his written review and the legislative finance committee's written report required by this section. Upon receipt of such waiver, the approving authority may approve the budget amendment on completion of his certification. Such a waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the budget amendment, and all other budget amendment requirements and standards remain in effect. After such a waiver, the legislative fiscal analyst may complete the written review.

(7) Nothing in this part confers any authority on the legislative finance committee to approve or deny budget amendments.

History: En. Sec. 4, Ch. 536, L. 1983; amd. Sec. 1, Ch. 457, L. 1985.

17-7-405. Voidness of improperly certified budget amendments. Any budget amendment that is not certified by the approving authority according to the standards and procedures set out in this part may be declared void in its entirety by a court of competent jurisdiction on complaint of the attorney general, the legislature, or the legislative finance committee. No funds may be expended under an improperly certified budget amendment.

History: En. Sec. 5, Ch. 536, L. 1983.

Part 5
Statutory Appropriations

Part Cross-References

Appropriations not to be enacted by initiative, Art. III, sec. 4, Mont. Const.

Appropriations not to be subject of referendum, Art. III, sec. 5, Mont. Const.

State debt, Art. VIII, sec. 8, Mont. Const.

Balanced budget, Art. VIII, sec. 9, Mont. Const.

Line item veto, 5-4-303.

Bills returned by Governor without approval, 5-4-305.

Disbursement and expenditure, Title 17, ch. 8.

17-7-501. Appropriations — type. There are three types of appropriations within the meaning of "appropriation made by law" as used in Article VIII, section 14, of the Montana constitution:

(1) temporary appropriations enacted by the legislature as part of designated appropriation bills or sections designated as appropriations in other bills;

(2) temporary appropriations made by valid budget amendment; and

(3) statutory appropriations made by permanent law in conformance with 17-7-502.

History: En. Sec. 1, Ch. 703, L. 1985.

17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-2-707; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)*

History: En. Sec. 2, Ch. 703, L. 1985; amd. Sec. 2, Ch. 244, L. 1985; amd. Sec. 11, Ch. 395, L. 1985; amd. Sec. 20, Ch. 635, L. 1985; amd. Sec. 19, Ch. 688, L. 1985; amd. Sec. 14, Ch. 701, L. 1985; amd. Sec. 14, Ch. 720, L. 1985; amd. Sec. 15, HB 861, L. 1985; amd. Sec. 10, HB 922, L. 1985; amd. Sec. 10, Ch. 161, L. 1987; amd. Sec. 2, Ch. 164, L. 1987; amd. Sec. 1, Ch. 265, L. 1987; amd. Sec. 8, Ch. 453, L. 1987; amd. Sec. 3, Ch. 454, L. 1987; amd. Sec. 30, Ch. 457, L. 1987; amd. Sec. 10, Ch. 460, L. 1987; amd. Sec. 21, Ch. 461, L. 1987; amd. Sec. 6, Ch. 465, L. 1987; amd. Sec. 11, Ch. 563, L. 1987; amd. Sec. 10, Ch. 603, L. 1987; amd. Sec. 10, Ch. 607, L. 1987; amd. Sec. 5, Ch. 664, L. 1987; amd. Sec. 14, Ch. 665, L. 1987; amd. Sec. 12, HB 621, L. 1987; amd. Sec. 1, Ch. 62, L. 1989; amd. Sec. 38, Ch. 262, L. 1989; amd. Sec. 23, Ch. 316, L. 1989; amd. Sec. 7, Ch. 324, L. 1989; amd. Sec. 1, Ch. 408, L. 1989; amd. Sec. 11, Ch. 473, L. 1989; amd. Sec. 13, Ch. 528, L. 1989; amd. Sec. 2, Ch. 530, L. 1989; amd. Sec. 3, Ch. 628, L. 1989; amd. Sec. 62, Ch. 642, L. 1989; amd. Sec. 13, Ch. 672, L. 1989; amd. Sec. 14, Ch. 678, L. 1989; amd. Sec. 10, Ch. 10, Sp. L. June 1989; amd. Sec. 6, Ch. 11, Sp. L. June 1989; amd. Sec. 16, Ch. 16, L. 1991; amd. Sec. 1, Ch. 344, L. 1991; amd. Sec. 2, Ch.

370, L. 1991; amd. Sec. 4, Ch. 394, L. 1991; amd. Sec. 2, Ch. 493, L. 1991; amd. Sec. 1, Ch. 495, L. 1991; amd. Sec. 2, Ch. 567, L. 1991; amd. Sec. 4, Ch. 571, L. 1991; amd. Sec. 1, Ch. 575, L. 1991; amd. Sec. 2, Ch. 600, L. 1991; amd. Sec. 10, Ch. 602, L. 1991; amd. Sec. 19, Ch. 609, L. 1991; amd. Sec. 5, Ch. 641, L. 1991; amd. Sec. 52, Ch. 647, L. 1991; amd. Sec. 1, Ch. 690, L. 1991; amd. Sec. 7, Ch. 701, L. 1991; amd. Sec. 14, Ch. 748, L. 1991; amd. Sec. 7, Ch. 787, L. 1991; amd. Sec. 3, Ch. 819, L. 1991; amd. Sec. 18, Ch. 823, L. 1991; amd. Sec. 2, Ch. 46, L. 1993; amd. Sec. 4, Ch. 69, L. 1993; amd. Sec. 3, Ch. 107, L. 1993; amd. Sec. 5, Ch. 108, L. 1993; amd. Sec. 3, Ch. 127, L. 1993; amd. Sec. 2, Ch. 195, L. 1993; amd. Sec. 2, Ch. 234, L. 1993; amd. Sec. 233, Ch. 265, L. 1993; amd. Sec. 3, Ch. 330, L. 1993; amd. Sec. 2, Ch. 389, L. 1993; amd. Sec. 3, Ch. 395, L. 1993; amd. Sec. 8, Ch. 415, L. 1993; amd. Sec. 4, Ch. 450, L. 1993; amd. Sec. 15, Ch. 452, L. 1993; amd. Sec. 2, Ch. 492, L. 1993; amd. Sec. 11, Ch. 526, L. 1993; amd. Sec. 9, Ch. 534, L. 1993; amd. Sec. 18, Ch. 555, L. 1993; amd. Sec. 4, Ch. 578, L. 1993; amd. Sec. 7, Ch. 581, L. 1993; amd. Sec. 4, Ch. 605, L. 1993; amd. Sec. 13, Ch. 613, L. 1993; amd. Sec. 6, Ch. 625, L. 1993; amd. Sec. 11, Ch. 630, L. 1993; amd. Sec. 3, Ch. 635, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 46 in (3) inserted "17-6-201" in list of statutory references.

Chapter 69 in (3) inserted "80-2-222" in list of statutory references. Amendment effective February 22, 1993.

Chapter 107 in (3) inserted "17-3-106" and "17-6-101" in list of statutory references. Amendment effective July 1, 1993.

Chapter 108 in (3) inserted "81-5-111" in list of statutory references.

Chapter 127 in (3) inserted "60-2-220" in list of statutory references.

Chapter 195 in (3) deleted "61-5-121" from list of statutory references.

Chapter 234 in (3) inserted "5-13-403" in list of statutory references. Amendment effective March 31, 1993.

Chapter 265 in (3) inserted "19-2-502" in and deleted "19-5-404", "19-8-504", "19-9-702", and "19-13-604" from list of statutory references. Amendment effective July 1, 1993.

Chapter 330 in (3) inserted "3-5-901" in list of statutory references. Amendment effective April 13, 1993.

Chapter 389 in (3) inserted "50-40-206" in list of statutory references.

Chapter 395 in (3) inserted "32-1-537" in list of statutory references.

Chapter 415 in (3) inserted "50-5-232" in list of statutory references.

Chapter 450 in (3) deleted "19-8-504" from list of statutory references. Amendment effective July 1, 1993.

Chapter 452 in (3) inserted "80-4-416" in list of statutory references. Amendment effective July 1, 1993.

Chapter 492 in (3) inserted "61-2-107" in list of statutory references. Amendment effective July 1, 1993.

Chapter 526 in (3) inserted "20-26-1403" in list of statutory references. Amendment effective April 24, 1993.

Chapter 534 in (3) inserted "90-14-107" in list of statutory references. Amendment effective April 24, 1993, and terminates July 1, 1995.

Chapter 555 in (3) inserted "39-71-503; 39-71-907" in list of statutory references. Amendment effective July 1, 1993.

Chapter 578 in (3) inserted "23-2-823" in list of statutory references.

Chapter 581 in (3) deleted "13-37-304" from list of statutory references. Amendment effective April 28, 1993.

Chapter 605 in (3) deleted "15-70-101" from list of statutory references. Amendment effective July 1, 1993.

Chapter 613 in (3) inserted "15-38-202" in list of statutory references. Amendment effective July 1, 1993.

Chapter 625 in (3) inserted "18-11-112" in list of statutory references. Amendment effective July 1, 1993.

Chapter 630 in (3) inserted "39-71-2321" in list of statutory references. Amendment effective July 1, 1993.

Chapter 635 in (3) inserted "85-2-707" in list of statutory references.

Purported 1993 Amendment — Coordination: Section 13(1), Ch. 352, L. 1993, provided: "If House Bill No. 92 is passed and approved and if it amends the State-Tribal Cooperative Agreements Act to specifically include the assessment and collection of a tax or license or permit fee and provides for revenue sharing, then [sections 3 through 5 of this act] are void." House Bill No. 92 was approved as Ch. 625, L. 1993, and contained the provisions alluded to in the coordination instruction. Chapter 352 inserted references in the (3) list of statutory references to sections 4 and 5 of Ch. 352, L. 1993, which were enacted but subsequently rendered void by the enactment of Ch. 625, L. 1993. The effect was that this section, although purportedly amended by sec. 11, Ch. 352, was not actually amended by that chapter.

Coordination: Section 7, Ch. 450, L. 1993, provided: "If Senate Bill No. 203 is not passed and approved, then [this act] is void." Senate Bill No. 203 was passed and approved as Ch. 367, L. 1993; therefore, Ch. 450, L. 1993, is valid.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

Termination — Disposition of Funds: Section 7, Ch. 567, L. 1991, provided: "(1) The provisions of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] terminate upon the death of the last recipient eligible under [section 1(2)] [19-6-709(2)] for the supplemental benefit provided by [section 1] [19-6-709].

(2) Money collected for the purposes of the supplemental payment under [section 1] [19-6-709] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon termination of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] must be used to amortize unfunded liabilities of the account."

CHAPTER 8

DISBURSEMENT AND EXPENDITURE

Part 1 — Limits on Disbursements and Expenditures

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Chapter Cross-References

Prohibited payments, Art. VIII, sec. 14, Mont. Const.

Treasurer to withhold payment, 2-2-206.

Part 1

Limits on Disbursements and Expenditures

Part Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Use of loan proceeds, Art. VIII, sec. 11, Mont. Const.

Prohibited payments, Art. VIII, sec. 14, Mont. Const.

Fiscal note to evidence change in expenditures, 5-4-205.

17-8-101. Appropriation and disbursement of money from treasury. (1) Money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), the enterprise fund type, the internal service fund type, and the capital projects fund type, with the exception of refunds authorized in subsection (3), must be paid out of the treasury only on appropriation made by law.

(2) Money deposited in the debt service fund type, expendable trust fund type, nonexpendable trust fund type, pension trust fund type, the state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, and agency fund type may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting the disbursement.

(3) Money paid into the state treasury through error or under circumstances, such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the department of administration.

(4) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

History: En. Sec. 7, Ch. 147, L. 1963; amd. Sec. 2, Ch. 268, L. 1971; amd. Sec. 2, Ch. 321, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-415(1) thru (3); amd. Sec. 1, Ch. 29, L. 1981; amd. Sec. 13, Ch. 281, L. 1983; amd. Sec. 5, Ch. 433, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 433 near beginning of (1), after "fund type", inserted exception clause; in (2), near middle after "pension trust fund type", inserted "the state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation"; inserted (4) regarding interagency transfer authority to expend appropriated money; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Authorization to expend during first year of biennium from appropriation for second year, 17-7-301.

Minimum refunds, 17-8-203.

17-8-102. Expenditure procedures — quarterly allotment system. (1) The department may establish procedures necessary to ensure that expenditures are made and accounted for in accordance with the budget plan authorized by the legislature in the enactment of the appropriations, including but not limited to procedures to accrue expenses incurred in one fiscal period and paid in a subsequent fiscal period and procedures for the issuance of purchase orders or contracts to be paid from succeeding year appropriations that will become available within 3 months from the date of the issuance of the purchase order or contract.

(2) The budget director may, when authorized by the governor, require a quarterly allotment system of expenditure for any office, institution, or agency. The amount of the respective appropriation made by the legislature shall then, except with respect to items of capital outlay and repairs and replacement through the long-range building program, be made available to the office, institution, or agency in quarterly allotments. However, the quarterly allotment shall be based on the requirements of that office, institution, or agency during that quarter based on previous experience of that office, institution, or agency and not on a prorated quarterly basis.

History: En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971; amd. Sec. 45, Ch. 326, L. 1974; R.C.M. 1947, 82-109(3), (4); (2)En. Sec. 1, Ch. 118, L. 1979; amd. Sec. 2, Ch. 118, L. 1979.

Cross-References

Contingent revolving accounts — when established, 17-2-201.

Reappropriation of encumbered obligations at end of each fiscal year, 17-7-303.

Appropriation and disbursement of money from the treasury, 17-8-101.

17-8-103. Expenditures in excess of appropriation unlawful — conditions in appropriation acts. (1) It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state or any officer, department, board, commission, or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the legislative appropriation, including any approved, authorized, and valid budget amendment, provided for such year or for any supervisory board or authority either directly or indirectly to authorize, direct, or order any such institution, officer, department, board, commission, or bureau to increase any expenditures, except as specifically provided by law. It shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions, and bureaus to keep such expenditures, obligations, and liabilities within the amount of such legislative appropriation, which includes an approved, authorized, and valid budget amendment.

(2) A condition or limitation contained in an appropriation act shall govern the administration and expenditure of the appropriation until the appropriation has been expended for the purpose set forth in the act or until such condition or limitation is changed by a subsequent appropriation act. In no event does a condition or limitation contained in an appropriation act amend any other statute.

History: En. Sec. 1, Ch. 40, L. 1937; amd. Sec. 2, Ch. 82, L. 1961; amd. Sec. 11, Ch. 343, L. 1977; R.C.M. 1947, 79-901; amd. Sec. 1, Ch. 618, L. 1979; amd. Sec. 8, Ch. 536, L. 1983; (2)En. Sec. 1, Ch. 693, L. 1983.

Cross-References

Contents of appropriation bill, Art. V, sec. 11, Mont. Const.

Authorization to expend during first year of biennium from appropriation for second year, 17-7-301.

Control of expenditures, 20-25-425.

17-8-104. Civil penalties and remedies for violation. (1) (a) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103(1) is personally liable and the surety or sureties on his bond shall also be liable to the state for the amount of the excess thus unlawfully expended. An action under this subsection (1)(a) may be brought upon complaint of the attorney general, of the legislature by joint resolution, of the legislative finance committee, or of any taxpayer, filed in a district court of this state.

(b) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103(1) is guilty of misfeasance in office and shall be guilty of wrongdoing and shall be subject to removal from office or from such employment. An action under this subsection (1)(b) may be brought upon complaint of the attorney general, the legislature by joint resolution, or any taxpayer, filed in a district court of this state.

(2) Complaints under subsections (1)(a) and (1)(b) may be combined in a single action.

(3) Remedies and penalties provided by this section may be pursued singly or in any combination.

History: En. Sec. 4, Ch. 40, L. 1937; amd. Sec. 3, Ch. 82, L. 1961; R.C.M. 1947, 79-904; amd. Sec. 2, Ch. 618, L. 1979; amd. Sec. 9, Ch. 536, L. 1983.

Cross-References

General provisions related to official bonds, Title 2, ch. 9, part 5.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

Public offices — vacancies created, 2-16-501.

Notice of removal, 2-16-503.

17-8-105. Definitions applicable to expenditure limitation. As used in 17-8-106, the following definitions apply:

(1) "Montana total personal income" means the current income from all sources received during a particular period of time by persons residing within Montana as determined by the United States department of commerce or its successor agency.

(2) "State expenditures" means the general fund appropriations, the special revenue fund type appropriations, and the cash portion of the appropriations in the capital projects fund type, excluding:

(a) money received from the federal government;

(b) payments of principal and interest on bonded indebtedness;

(c) money paid for unemployment or disability insurance benefits;

(d) money received from the sale of goods or services provided that the purchase of the goods or services is discretionary;

(e) money paid from permanent endowments, constitutional trusts, or pension funds;

(f) proceeds of gifts or bequests made for purposes specified by the donor;

(g) money appropriated for tax relief; and

(h) funds transferred within state government or used to purchase goods for resale.

History: En. Sec. 1, Ch. 514, L. 1981; amd. Sec. 14, Ch. 281, L. 1983.

17-8-106. Expenditure limitation — exception. (1) Except as provided in subsection (2), the state expenditures for a biennium may not exceed the state expenditures for the preceding biennium plus the product of the state expenditures for the preceding biennium and the growth percentage. The growth percentage is the percentage difference between the average Montana total personal income for the 3 calendar years immediately preceding the next biennium and the average Montana total personal income for the 3 calendar years immediately preceding the current biennium.

(2) The legislature may appropriate funds in excess of this limit from the reserve account if:

(a) the governor declares that an emergency exists; and

(b) two-thirds of the members of each house approve a bill stating the amount to be spent in excess of the expenditures limitation established in subsection (1), the source of the excess revenue to be spent, and an intention to exceed the limitation.

(3) Expenditures may exceed the expenditures limitation only for the year or years for which an emergency has been declared.

(4) The legislature is not required to appropriate the full amount allowed in any year under subsection (1).

History: En. Sec. 2, Ch. 514, L. 1981.

Cross-References

Declaration of emergency — effect and termination, 10-3-302.

17-8-107. Limitations on spending deferred revenue — exception. (1) Except as provided in subsection (2), no agency, including any unit of the university system, may expend deferred revenue for current fiscal year operations. For purposes of this section, "deferred revenue" means funds received in one fiscal year but properly allocable and recorded as revenue in the subsequent fiscal year.

(2) The Montana historical society is exempt from the provisions of subsection (1) to the extent that the expenditure of deferred revenue received from magazine subscription fees is necessary to finance current fiscal year operations for the publication of its magazine of western history.

History: En. Sec. 1, Ch. 573, L. 1983; amd. Sec. 1, Ch. 52, L. 1987.

Part 2
Claims

Part Cross-References

Auditing officer to disallow claims, 2-2-205.

Tort claims, Title 2, ch. 9, parts 1, 3.

State insurance plan and tort claims, Title 2, ch. 9, part 2.

Board of examiners — allocation, 2-15-1007.

Claim settlement by Attorney General, 18-1-412, 18-1-413.

Verification of pleadings, 25-4-203.

17-8-201. Authorizations for disbursements — submission of claim to department of administration. (1) All authorizations for disbursements shall be given by the agency concerned, and a record shall be kept by the agency of all the authorizations and expenditures. Claims for any disbursement must be submitted to the department of administration.

(2) The department may prescribe the claim form and may establish, in writing, rules governing the preparation, submittal, and processing of claims. All claims shall be processed in the order of their presentation, and all claims disapproved by the department shall be returned to the operating agency with an explanation in writing of why the claim was disapproved.

History: (1)En. Sec. 1, Ch. 97, L. 1961; amd. Sec. 46, Ch. 326, L. 1974; 82-109.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 97, L. 1961; amd. Sec. 48, Ch. 326, L. 1974; Sec. 82-109.3, R.C.M. 1947; R.C.M. 1947, 82-109.1, 82-109.3; amd. Sec. 1, Ch. 87, L. 1989.

Cross-References

Appropriation and disbursement of money from the treasury, 17-8-101.

17-8-202. Preaudit and transmittal of claims. (1) The department of administration is not required to preaudit a liquidated claim against the state. However, the department of administration may preaudit those claims it considers necessary. The agency shall retain the original of all documents that support claims sent to the department. These documents are subject to postaudit by the legislative auditor.

(2) An office or entity of the executive, legislative, or judicial branch of state government may not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If no appropriation is available for the payment of a claim, the department shall audit it and, if it is a valid claim, transmit it to the governor for presentation to the legislature.

History: En. Sec. 2, Ch. 97, L. 1961; amd. Sec. 29, Ch. 271, L. 1963; amd. Sec. 1, Ch. 91, L. 1969; amd. Sec. 47, Ch. 326, L. 1974; R.C.M. 1947, 82-109.2; amd. Sec. 1, Ch. 498, L. 1979; amd. Sec. 1, Ch. 88, L. 1985; amd. Sec. 2, Ch. 87, L. 1989; amd. Sec. 1, Ch. 353, L. 1989.

Cross-References

Powers and duties, 5-13-304.

17-8-203. Minimum refunds. When not specifically provided by law, the department may establish a minimum amount which shall be paid on a refund due from the various agencies of the state, and no refund amounting to less than the established minimum shall be paid except upon the specific written request of the person entitled to receive the refund.

History: En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50, Ch. 326, L. 1974; R.C.M. 1947, 82-110(4).

Cross-References

Appropriation and disbursement of money from the treasury, 17-8-101.

17-8-204 through 17-8-210 reserved.

17-8-211. Notice required for assignment of claims against state. (1) All transfers and assignments made of any claim against the state, or any part thereof or interest thereon, except as hereinafter provided, shall be absolutely null and void and unenforceable against the state unless the assignee thereof files written notice of the assignment on such forms as may be required by the state auditor, together with a true copy of the instrument of assignment.

(2) The state auditor may promulgate rules regarding the form of assignment, the procedures for filing assignments, and the submission of claims covering assigned funds.

(3) Unless otherwise expressly permitted by the state auditor, no more than one assignment of a claim shall be effective at one time, and no assignment shall be made to more than one party, except that an assignment may be made to one party as agent or trustee for two or more parties. An assignment shall not be subject to further assignment.

History: **En. Secs. 1 thru 3, Ch. 44, L. 1967; R.C.M. 1947, 83-901, 83-902, 83-903.**

Cross-References

Filing of claims against state and political subdivisions, 2-9-301.

Contract actions against the state, Title 18, ch. 1, part 4.

17-8-212. Effect of assignment. Nothing contained herein shall in any way impair the negotiability of state warrants or preclude employees of the state from authorizing deductions from salaries for employees group insurance programs authorized by law, union dues, or purchase of U.S. government savings bonds.

History: **En. Sec. 4, Ch. 44, L. 1967; R.C.M. 1947, 83-904.**

Cross-References

Restrictions upon assignment of wages or salary, 31-1-304.

17-8-213 through 17-8-220 reserved.

17-8-221 through 17-8-226. Repealed. Sec. 2, Ch. 88, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

17-8-221. (1)En. Sec. 236, Rev. C. 1907; re-en. Sec. 242, R.C.M. 1921; re-en. Sec. 242, R.C.M. 1935; Sec. 82-1113, R.C.M. 1947; (2)En. Sec. 232 to 253 were enacted as Sections 1 to 21, pp. 183 to 187, L. 1891; re-en. Secs. 680 to 701, Pol. C. 1895; appearing as Secs. 226 to 247, Rev. C. 1907; re-en. Sec. 232, R.C.M. 1921; Cal. Pol. C. Secs. 654-685; re-en. Sec. 232, R.C.M. 1935; amd. Sec. 7, Ch. 97, L. 1961; Sec. 82-1101, R.C.M. 1947; R.C.M. 1947, 82-1101(part), 82-1113.

17-8-222. (1)En. Sec. 228, Rev. C. 1907; re-en. Sec. 234, R.C.M. 1921; re-en. Sec. 234, R.C.M. 1935; amd. Sec. 8, Ch. 97, L. 1961; amd. Sec. 53, Ch. 326, L. 1974; Sec. 82-1105, R.C.M. 1947; (2)En. Sec. 230, Rev. C. 1907; re-en. Sec. 236, R.C.M. 1921; re-en. Sec. 236, R.C.M. 1935; Sec. 82-1107, R.C.M. 1947; (3)En. Sec. 231, Rev. C. 1907; re-en. Sec. 237, R.C.M. 1921; re-en. Sec. 237, R.C.M. 1935; Sec. 82-1108, R.C.M. 1947; R.C.M. 1947, 82-1105, 82-1107, 82-1108.

17-8-223. En. Sec. 237, Rev. C. 1907; re-en. Sec. 243, R.C.M. 1921; re-en. Sec. 243, R.C.M. 1935; R.C.M. 1947, 82-1114.

17-8-224. (1)En. Sec. 238, Rev. C. 1907; re-en. Sec. 244, R.C.M. 1921; re-en. Sec. 244, R.C.M. 1935; Sec. 82-1115, R.C.M. 1947; (2)En. Sec. 239, Rev. C. 1907; re-en. Sec. 245, R.C.M. 1921; re-en. Sec. 245, R.C.M. 1935; Sec. 82-1116, R.C.M. 1947; R.C.M. 1947, 82-1115, 82-1116.

17-8-225. (1)En. Sec. 241, Rev. C. 1907; re-en. Sec. 247, R.C.M. 1921; re-en. Sec. 247, R.C.M. 1935; R.C.M. Sec. 82-1118, R.C.M. 1947; (2)En. Sec. 240, Rev. C. 1907; re-en. Sec. 246, R.C.M. 1921; re-en. Sec. 246, R.C.M. 1935; amd. Sec. 10, Ch. 61, L. 1977; Sec. 82-1117, R.C.M. 1947; R.C.M. 1947, 82-1117, 82-1118.

17-8-226. En. Sec. 242, Rev. C. 1907; re-en. Sec. 248, R.C.M. 1921; re-en. Sec. 248, R.C.M. 1935; R.C.M. 1947, 82-1119.

17-8-227 through 17-8-230 reserved.

17-8-231. Liability for false claims. (1) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to any state agency or its contractors forfeits the claim, including any portion that may be legitimate, and in addition is subject to a penalty of not to exceed $2,000 plus double the damages sustained by the state as a result of the false claim, including all legal costs.

(2) The forfeiture and the penalty may be sued for in the same suit.

History: En. Sec. 2, Ch. 151, L. 1981.

Cross-References

False claims to public agencies — criminal offense, 45-7-210.

17-8-232 through 17-8-240 reserved.

17-8-241. Definitions relating to interest assessment. As used in 17-8-242 through 17-8-244, the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by the state or any agency thereof.

(2) "Supplies" means all personal property purchased, leased, or contracted for by the state or any agency thereof, including leases of equipment. The term also includes leases of buildings or other real property by the state or any agency thereof.

History: En. Sec. 1, Ch. 484, L. 1983.

Cross-References

State purchasing — general provisions, Title 18, ch. 4.

17-8-242. Interest assessed on amounts due. (1) Except as provided in 17-8-244, a state agency shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the agency fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 30 days after receipt of a properly completed invoice, addressed to the payer agency, or receipt of the supplies or services by the agency, whichever is later.

History: En. Sec. 2, Ch. 484, L. 1983.

Cross-References

Legal interest, 31-1-106.

17-8-243. Source for payment of interest. Any interest owing under 17-8-242 must be paid from funds designated for administrative costs of the agency receiving the supplies and services unless the delay was caused by a different agency, and then the interest must be paid from the administrative costs of that agency.

History: En. Sec. 4, Ch. 484, L. 1983.

17-8-244. Exemptions. Section 17-8-242 does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute;

(3) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

(4) contracts entered into before October 1, 1983;

(5) wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

(6) claims submitted to the state or to its fiscal intermediary by providers of supplies or services under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists.

History: En. Sec. 3, Ch. 484, L. 1983.

Part 3
Warrants

Part Cross-References

Officers prohibited from dealing in warrants, 2-2-204.

Use of facsimile signature on warrants, 2-16-114.

Warrants to Fire Department Relief Association, 19-18-514.

17-8-301. State moneys — how expended by treasurer. (1) Except as herein provided, no moneys received by the state treasurer may be paid out by him except upon state warrant issued by the state auditor or on electronic funds transfer authorized by the state auditor. The state auditor may not issue his warrant or authorize an electronic funds transfer upon the state treasurer except upon a claim duly approved by the department of administration in accordance with the laws governing the expenditure of state moneys; however, interest and principal on the public debt may be paid by treasurer's check from the moneys pledged for such payment, and the provisions of this section do not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer.

(2) As used in 2-18-405 and this section, "electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape and that orders, instructs, or authorizes the state auditor to debit or credit an account.

History: En. Sec. 2, Ch. 112, L. 1921; re-en. Sec. 193, R.C.M. 1921; re-en. Sec. 193, R.C.M. 1935; amd. Sec. 6, Ch. 97, L. 1961; amd. Sec. 2, Ch. 152, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-202; amd. Sec. 3, Ch. 101, L. 1989; (2) En. Sec. 1, Ch. 101, L. 1989.

Cross-References

General fiscal duties of State Treasurer, 17-1-111.

Contingent revolving accounts — when established, 17-2-201.

17-8-302. Order in which warrants are drawn. All warrants for claims which have been audited by the department of administration and filed in the auditor's office must be drawn in the order in which they are transmitted to him by the department of administration.

History: En. Sec. 423, Pol. C. 1895; re-en. Sec. 173, Rev. C. 1907; re-en. Sec. 154, R.C.M. 1921; Cal. Pol. C. Sec. 436; re-en. Sec. 154, R.C.M. 1935; amd. Sec. 5, Ch. 97, L. 1961; R.C.M. 1947, 79-104.

17-8-303. Warrants — presentation and cancellation. (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state auditor on the state treasury shall be presented for payment within 6 months after the date of the issue thereof.

(b) Warrants issued for the department of social and rehabilitation services that are funded to any extent with federal money shall be presented for payment within 180 days after the date of issue.

(2) Should the payee or legal holder of any warrant fail to present it for payment within the time specified in subsection (1), the state auditor shall enter the same as canceled on the books of his office and the amount shall be credited to a separate agency fund account administered by the state auditor. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment within 4 years from the date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant in lieu thereof.

(3) Three years and 6 months after cancellation, the warrant shall be classed as unclaimed property subject to the provisions of Title 70, chapter 9, parts 1 through 3. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment, such presentation shall be to the department of revenue as provided in 70-9-310.

History: En. Sec. 1, Ch. 80, L. 1907; re-en. Sec. 178, Rev. C. 1907; re-en. Sec. 158, R.C.M. 1921; re-en. Sec. 158, R.C.M. 1935; amd. Sec. 3, Ch. 94, L. 1969; amd. Sec. 1, Ch. 276, L. 1977; R.C.M. 1947, 79-108; amd. Sec. 1, Ch. 84, L. 1987; amd. Sec. 4, Ch. 101, L. 1989.

Cross-References

Disposition of unclaimed property, Title 70, ch. 9, parts 1 through 3.

17-8-304. Payment, registry, and interest. (1) The state treasurer shall, on the presentation of state warrants regularly issued, pay the same out of any funds available for such payments, and in the event there are no funds available for such payment, he must register each warrant in a book or register to be kept for that purpose, entering the date of issue, date of registration, name in whose favor warrant is drawn, and the number and amount thereof and endorse on each warrant so registered, on its face, "presented for payment and not paid for want of funds and registered in this office this .... day of ....", inserting the date of registration, and he shall affix his signature as such treasurer thereto. All warrants so registered and endorsed on and after March 1, 1927, shall bear interest at the rate of 4% a year until called for payment, after date of which call interest shall cease. All warrants shall be redeemed and paid in the order of their registration.

(2) Nothing herein contained shall be construed to apply to any warrants issued on account of any land grant fund or by virtue of any special act authorizing the issuance thereof.

History: (1)En. Sec. 1, p. 98, L. 1899; re-en. Sec. 181, Rev. C. 1907; amd. Sec. 1, Ch. 260, L. 1921; amd. Sec. 1, Ch. 6, Ex. L. 1921; re-en. Sec. 180, R.C.M. 1921; amd. Sec. 1, Ch. 159, L. 1923; amd. Sec. 1, Ch. 111, L. 1925; amd. Sec. 1, Ch. 2, L. 1927; re-en. Sec. 180, R.C.M. 1935; amd. Sec. 5, Ch. 61, L. 1977; 79-208, R.C.M. 1947; (2)En. Sec. 2, P. 99, L. 1899; re-en. Sec. 182, Rev. C. 1907; re-en. Sec. 181, R.C.M. 1921; re-en. Sec. 181, R.C.M. 1935; 79-209 R.C.M. 1947; R.C.M. 1947, 79-208, 79-209.

17-8-305. Cost accounting for warrant. In his discretion it is the duty of the state auditor to establish a cost accounting system to determine the unit cost of issuing and processing warrants and provide for a system of charges for services rendered in issuing and processing warrants for claims submitted by any department or agency of the state. No such charge shall be made for warrants issued against the general fund. Funds collected under this section for budgeted programs shall be deposited to the credit of the general fund. Funds collected for new or unforeseen programs may be deposited to the credit of a state special revenue fund account and expended for the purposes of paying the processing expenses incurred as a result of the new program.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R.C.M. 1921; Cal. Pol. C. Sec. 433; re-en. Sec. 151, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-101(17); amd. Sec. 3, Ch. 277, L. 1983.

17-8-306. Issuance of duplicate warrant. (1) The state auditor may issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state is lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate", and except as herein provided, no such warrant may be issued or delivered unless the person entitled to receive the same deposits with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save Montana and its officers harmless on account of the issuance of the duplicate warrant.

(2) No bond of indemnity is required when:

(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) the owner or custodian is the state of Montana or any agency or officer thereof;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) the state auditor has chosen to waive the requirement upon receipt of evidence that the original warrant has been lost or destroyed as a result of a disaster or other major occurrence;

(e) the amount of the lost or destroyed warrant is less than $300;

(f) it can be established that a crime has been committed and as a result of such crime that a Montana warrant has been stolen or destroyed;

(g) it can be established that a Montana warrant has been mailed to an incorrect payee;

(h) the payee is a vendor or contractor doing business with the state of Montana;

(i) the payee is a recipient of public assistance under Title 53;

(j) the payee is a recipient of a monthly annuity under Title 19; or

(k) the payee is a recipient of student financial assistance administered or insured by the guaranteed student loan program pursuant to Title 20, chapter 26.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(d), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), or (2)(k), a stop-payment order shall be placed on the original warrant by the state auditor.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), or (2)(k), the application shall include an agreement to indemnify and hold harmless the state or its officers and employees from any loss resulting from the issuance

of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived.

History: **En. Sec. 1, Ch. 19, L. 1909; re-en. Sec. 159, R.C.M. 1921; re-en. Sec. 159, R.C.M. 1935; amd. Sec. 4, Ch. 94, L. 1969; amd. Sec. 1, Ch. 318, L. 1977; R.C.M. 1947, 79-109; amd. Sec. 1, Ch. 181, L. 1985; amd. Sec. 1, Ch. 50, L. 1987; amd. Sec. 1, Ch. 118, L. 1991.**

17-8-307. Board's power to prevent payment of auditor's warrants. Whenever the board of examiners has reason to believe that the state auditor has drawn or is about to draw his warrant without authority of law or for a larger amount than the state actually owes, the board must notify the state treasurer not to pay the warrant so drawn or to be drawn; and thereupon the treasurer is prohibited from paying the warrant, whether already drawn or not, until he is otherwise directed by the legislature or the board.

History: **En. Sec. 244, Rev. C. 1907; re-en. Sec. 250, R.C.M. 1921; re-en. Sec. 250, R.C.M. 1935; R.C.M. 1947, 82-1121.**

Cross-References

General fiscal duties of State Treasurer, 17-1-111.

17-8-308. Payment of interest — land grant warrants. The interest on all land grant warrants shall be payable on July 1 next succeeding the date of issue and annually thereafter. Whenever there is sufficient money in any of the land grant funds to pay outstanding warrants or interest thereon, the treasurer shall cause to be published a brief notice that said warrants or the interest on particular warrants on which interest would be payable on July 1, describing them by numbers and names of funds, will be forthwith payable; and on the presentation of any such warrants on or at any time after July 1, the treasurer shall pay the interest thereon, endorsing the date of payment and amount paid of each warrant, returning the same to the holder, and he shall keep a register showing the dates and amounts of each interest payment on each warrant in each fund. If any warrants are called for payment, interest thereon shall cease on the date fixed in said notice.

History: **En. Sec. 3512, Pol. C. 1895; re-en. Sec. 2204, Rev. C. 1907; amd. Sec. 92, Ch. 147, L. 1909; re-en. Sec. 1917, R.C.M. 1921; re-en. Sec. 1917, R.C.M. 1935; R.C.M. 1947, 79-1501.**

17-8-309 and 17-8-310 reserved.

17-8-311. Payments to local government entities — notice. (1) For the purposes of this section the following definitions apply:

(a) "Finance officer" means the county treasurer, city treasurer, town clerk, or the equivalent provided for in Title 7, chapter 3.

(b) "Local government entity" means a public entity that, whether or not governed by the legislative body of the local government, is required by law to conduct financial affairs through the finance officer of a city, town, or county. The term does not include a school district or a conservation district.

(2) All payments made by a state agency to any city, town, county, or local government entity must be payable to the finance officer of the appropriate city, town, or county. If the payment is to be deposited to the credit of a local government entity, the finance officer shall mail a notice of receipt of the payment to the local government entity. When applicable, the finance officer

shall deposit the payment in the appropriate fund or account to the credit of the local government entity.

(3) If the state agency is unable to determine if the payee is a government entity, the state agency shall process the claim as if it was not payable to a government entity. The state agency shall also mail a notice of issuance of the payment to the finance officer of the county and city to which the payment was issued.

(4) If a finance officer of a county receives a payment under subsection (2) or a notice of issuance under subsection (3), he shall notify the county clerk and recorder that the payment or notice has been received.

History: En. Sec. 1, Ch. 320, L. 1989.

TITLE 18

PUBLIC CONTRACTS

Ch.
1. Public Contracts Generally.
2. Construction Contracts.
3. State Building Leases.
4. Montana Procurement Act.
5. Special Purchasing Conditions.
6. Sales.
7. Printing and Legal Notices.
8. Procurement of Services.
Chapters 9 and 10 reserved.
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CHAPTER 1

PUBLIC CONTRACTS GENERALLY

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Chapter Cross-References

Construction of contracts, Title 1, ch. 4, part 1.

Officers, legislators not to have interest in contracts, 2-2-201.

Transfer of contract rights under executive reorganization, 2-15-135.

Lease of buildings by state, 2-17-101.

Contract authority — television district, 7-13-2510, 7-13-2511.

Failure to make timely payment — interest assessment on amounts due, 17-8-242.

Attachment in contract actions, 27-18-101, 27-18-201.

Injunctions in contract actions, 27-19-103.

Revision and rescission of contracts, Title 28, ch. 2, parts 16 and 17.

Interpretation of contracts, Title 28, ch. 3.

Plain language, Title 30, chapter 14, part 11.

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Part 1

Preferences and General Matters

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Public participation in awarding contracts, 2-3-103, 2-3-104, 2-3-111.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch.30.

Freedom from discrimination in public contracts, 49-3-207.

18-1-101. Definitions. (1) Unless the context requires otherwise, in this title "department" means the department of administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.

(b) "Montana-made" means manufactured or produced in this state and made with the:

(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or

(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.

(c) "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.

(d) "Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.

(e) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.

History: En. 82-1901.1 by Sec. 57, Ch. 326, L. 1974; R.C.M. 1947, 82-1901.1; amd. Sec. 1, Ch. 512, L. 1987.

18-1-102. State contracts to lowest bidder. (1) (a) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

(i) a public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of any nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.

(ii) a public contract for the purchase of goods, if the goods are comparable in quality and performance, to the lowest responsible resident bidder whose:

(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;

(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or

(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.

(b) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:

(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and

(B) not more than 5% higher than that of the nonresident bidder.

(ii) However, no combination of preferences under this subsection may exceed 5%.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

History: En. Sec. 1, Ch. 183, L. 1961; amd. Sec. 1, Ch. 197, L. 1969; R.C.M. 1947, 82-1924; amd. Sec. 1, Ch. 468, L. 1985; amd. Sec. 2, Ch. 512, L. 1987; amd. Sec. 1, Ch. 32, L. 1991.

Cross-References

Competitive bids for county road contracts, 7-14-2404.

Contracts for bridges, 7-14-2406.

Award of contract by local improvement district, 7-14-2716.

Economic development bonds — preference to Montanans, 17-5-1526, 17-5-1527.

Montana in-state investment — preference to Montana labor, 17-6-325.

Interest assessed on amounts overdue, 17-8-242.

Preference of Montana labor in public works — wages — federal exception, 18-2-403.

Small business set-asides, 18-5-304.

Construction with other sections — small business preferences, 18-5-308.

Resident printer preference, 18-7-107.

Letting contracts for school facilities, 20-6-606.

School districts — contracts with Montana firms encouraged, 20-6-635.

Competitive bidding — highways, 60-2-112.

Industrial development projects — preference to Montanans, 90-5-114.

18-1-103. Residence defined. (1) For the purpose of 18-1-102, 18-1-103, and 18-1-111, the word "resident" shall include actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of such contract that said corporation is a wholly owned subsidiary of a foreign corporation or that said corporation was formed for the purpose of circumventing the provisions relating to residence.

(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, 18-1-103, and 18-1-111.

History: En. Sec. 2, Ch. 183, L. 1961; amd. Sec. 2, Ch. 197, L. 1969; amd. Sec. 1, Ch. 74, L. 1974; R.C.M. 1947, 82-1925; amd. Sec. 1, Ch. 284, L. 1987; amd. Sec. 58, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1987.

Cross-References

Residence — rules for determining, 1-1-215.

"Bona fide resident of Montana" defined, 18-2-401.

Resident defined — hunting and fishing, 87-2-102.

18-1-104. Repealed. Sec. 2, Ch. 92, L. 1979.

History: En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973; R.C.M. 1947, 82-1925.1(part).

18-1-105. Repealed. Sec. 2, Ch. 92, L. 1979.

History: En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973; R.C.M. 1947, 82-1925.1(part).

18-1-106. Department of commerce to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence. (1) The department of commerce shall determine whether or not certain contractors, issued public contractor's licenses under the provisions of Title 37, chapter 71, are residents of the state of Montana within the meaning of 18-1-102 and 18-1-103. Any public agency charged by law with the responsibility for the execution of any contract subject to the provisions of 18-1-102 may request that a determination of resident/nonresident status be made by the department. All requests must specify the name and address of the licensed public contractor for whom a determination of resident/nonresident status is required.

(2) If a determination is made that a licensed public contractor is not a resident but he thereafter qualifies as such, he may apply to the department of commerce for a redetermination of his residency. If, upon redetermination, the licensed public contractor is found to qualify as a resident, he shall be furnished a letter by the department attesting to such status.

(3) The determination of the department of commerce that a licensed public contractor is or is not a resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact.

History: En. Sec. 1, Ch. 92, L. 1979; amd. Sec. 1, Ch. 2, L. 1985.

18-1-107 through 18-1-109 reserved.

18-1-110. Hiring preference for residents of Indian reservations for state construction projects within reservation — rules. (1) For any contract awarded by a state agency for a state construction project within the exterior boundaries of an Indian reservation, except a project partially funded with federal-aid money from the United States department of transportation or when residency preference laws are specifically prohibited by federal law, there must be inserted in the bid specification and the contract a provision, in language approved by the commissioner of labor and industry, implementing the requirements of this subsection. The bid specification and the contract must provide that a preference in hiring for positions of employment be given to Indian residents of the reservation who have substantially equal qualifications for any position. For the purposes of this section, the definitions in 2-18-111 apply.

(2) The commissioner of labor and industry shall enforce this section, investigate complaints of its violation, and may adopt rules to implement this section.

History: En. Sec. 2, Ch. 506, L. 1991.

18-1-111. Impartiality to be shown in letting contracts — preference to residents. The department may not show any partiality or favoritism in making awards or contracts and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over nonresident bidders.

History: En. Sec. 10, Ch. 66, L. 1923; re-en. Sec. 293.10, R.C.M. 1935; amd. Sec. 75, Ch. 326, L. 1974; R.C.M. 1947, 82-1920; amd. Sec. 2, Ch. 284, L. 1987.

Cross-References

Preference of Montana labor in public works — wages — federal exception, 18-2-403.

Construction with other sections — small business preferences, 18-5-308.

Nondiscrimination provision in all public contracts, 49-3-207.

18-1-112. Montana product preference provisions. (1) Each contract awarded by a public agency must contain among its provisions a requirement that in all instances Montana-made goods must be preferred for use in all projects if such goods are comparable in price and quality.

(2) It is the intent of 18-1-102, 18-1-103, and this section that, whenever possible, Montana-made goods that are suitable substitutes for goods manufactured or produced outside the state and comparable in price, quality,

and performance are preferred for use in all projects and in all state institutions.

(3) Failure to comply with the law in this respect disqualifies such contractor as a qualified bidder for future contracts with the public agency for a period of 2 years.

(4) The preference given to Montana-made goods applies to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

History: En. Sec. 3, Ch. 183, L. 1961; amd. Sec. 3, Ch. 197, L. 1969; amd. Sec. 6, Ch. 97, L. 1977; R.C.M. 1947, 82-1926; amd. Sec. 4, Ch. 512, L. 1987.

Cross-References

Competitive bids for county road contracts, 7-14-2404.

Contracts for bridges, 7-14-2406.

Award of contract by local improvement district, 7-14-2716.

Preference of Montana labor in public works — wages — federal exception, 18-2-403.

Construction with other sections — small business preferences, 18-5-308.

School districts — contracts with Montana firms encouraged, 20-6-635.

Purpose of Development Credit Corporation Act, 32-4-102.

Complaints against licensee — grounds — investigation — hearing — suspension of license — appeals, 37-71-301.

Competitive bidding — highways, 60-2-112.

18-1-113. Bidder to submit affidavit — penalty. (1) A bidder on a public contract for goods who is claiming a preference under this part shall either have on file with or submit to the public agency with its bid an affidavit specifying in detail, as determined by rule by the department, the basis on which the bidder claims the preference.

(2) If the public agency determines that the bidder has submitted a false affidavit under subsection (1), the bidder is disqualified as a bidder for future public contracts for goods with any public agency for a period of 5 years from the date of the determination.

History: En. Sec. 6, Ch. 512, L. 1987.

18-1-114. Rules. The department shall adopt rules necessary to administer the preferences provided in this part. The department's rules apply to all public agencies.

History: En. Sec. 7, Ch. 512, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

18-1-115 through 18-1-117 reserved.

18-1-118. Access to records of contracting entities. Money may not be spent by a state agency under a contract with a nonstate entity unless the contract contains a provision that allows the legislative auditor and the legislative fiscal analyst sufficient access to the records of the nonstate entity to determine whether the parties have complied with the terms of the contract. The access to records is necessary to carry out the functions provided for in Title 5, chapters 12 and 13. A state agency may terminate a contract, without incurring liability, for the refusal of a nonstate entity to allow access to records as required by this section.

History: En. Sec. 12, Ch. 787, L. 1991.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Fiscal analysis information from state agencies, 5-12-303.

Legislative Auditor — information from state agencies, 5-13-309.

Part 2
Bid Security

Part Cross-References

Rural special improvement districts — bids, 7-12-2131.

Special improvement districts — bids, 7-12-4141.

County road improvement districts — bids, 7-14-2715.

Bids and contractor's bond, 17-5-603, 17-5-613.

Surety insurance — performance bonds included, 33-1-211.

Resident insurance producer not required for sale of bid bond, 33-17-1111.

Surety insurers — may execute performance bonds, 33-26-104.

Highways — bidder's security — contractor's bond, 60-2-113.

18-1-201. Requirement for bidder's security. (1) A "public authority" or "obligee" includes:

(a) the state of Montana or any department (including the department of administration, unless otherwise authorized by express provision of law), institution, board, commission, agency, authority or subordinate jurisdiction thereof;

(b) any county or other political subdivision of this state;

(c) any municipal corporation or authorized subdivision thereof; or

(d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana.

(2) Except as provided in 18-4-312, in all cases where a public authority or obligee is authorized by law to solicit bids, tenders, or proposals for public works, improvements, or undertakings of any kind or for the purchase of commodities, goods, or property or for the procurement of technical or special services on a bid basis (exclusive of services on the basis of salaries or wages) or for the sale and purchase of bonds, debentures, notes, or any other forms of indebtedness of any such public authority, the respective executive, administrative, or other officers of and acting for such public authority shall require, as a condition precedent to considering any such bids, as evidence of good faith on the part of the bidder, and as indemnity for the benefit of such public authority against the failure or refusal of any bidder to enter into any written contract that may be awarded upon and following acceptance of bid or as a condition precedent to consummating any sale and purchase of any forms of indebtedness, that any bid shall contain a written covenant of indemnity conditioned as herein prescribed and that the bid shall be accompanied by bid security of the nature herein specified for the performance of such covenant.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 424, L. 1985.

Cross-References

State contracts to lowest resident bidder, 18-1-102.

Bid security, 18-2-302.

Indemnity, Title 28, ch. 11, part 3.

18-1-202. Advertisement for bid to specify required security. (1) The advertisement, request, or solicitation for bids or offers shall distinctly specify that all bidders, offerors, tenderers, or contractors shall:

(a) in any case where bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder shall be awarded the contract the bidder will, within the time required as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract; otherwise, the bidder will pay unto the public authority the difference in money between the amount of the bid of the bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities, or services, as the case may be, if the latter amount be in excess of the former; or

(b) in any case where the bids are solicited for the purchase and sale of any forms of indebtedness of such public authority, expressly covenant that the money or bank instrument accompanying the bid in the sum specified by the public authority shall be kept and retained by the public authority as liquidated damages for failure to consummate the purchase of such forms of indebtedness as may be awarded on acceptance of bid and in compliance with the terms thereof.

(2) The public authority shall distinctly specify in the solicitation or advertisement for bids the penal or other sum fixed by statute to be paid by any bidder failing or refusing as aforesaid in any case where such sum or sums are fixed by statute for bid security; otherwise, it shall in all cases specify the sum, but in no case less than 2% of the principal amount of the indebtedness for a bid for the purchase of indebtedness and 10% of the bid price for any other bid, which it may deem reasonably necessary to protect and indemnify the public authority against the failure or refusal of the bidder to enter into the contract or consummate the purchase of indebtedness, as the case may be.

(3) The advertisement, request, or other solicitation for bids or offers shall distinctly specify that lawful moneys of the United States or a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by banks as herein specified, payable as aforesaid, or bid bond in any case appropriate therefor shall constitute compliance with the requirement for bid security.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 85, L. 1979.

Cross-References

Bid security, 18-2-302.
Damages for breach of contract, 27-1-311.
Indemnity, Title 28, ch. 11, part 3.

18-1-203. Form of security. (1) Except as provided in subsection (4), in all cases under 18-1-202(1)(a) the bidder, offeror, or tenderer shall accompany any bid with either:

(a) lawful moneys of the United States;

(b) a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana; or

(c) a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana.

(2) Except as provided in subsection (4), in all cases under 18-1-202(1)(b) the bidder shall accompany the bid with the security described in (1)(a) or (1)(b) above.

(3) The moneys or, in lieu of moneys, any of such bank instruments or bid bonds shall be payable directly to the public authority soliciting or advertising for bids.

(4) The provisions of this section do not apply to bonds issued under Title 17, chapter 5, part 8.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 11, Ch. 184, L. 1983.

Cross-References

Bid security, 18-2-302.

Suretyship, Title 28, ch. 11, part 4.

Banks — acceptance and issuance of drafts and letters of credit, 32-1-437.

Certified checks, 32-1-441.

18-1-204. Forfeiture — bidder's liability — waiver. (1) Except as provided in subsection (3), if in any instance one or more bids be accepted or a sale of any form of indebtedness is ordered or a contract is awarded, any bidder whose bid is accepted and who shall thereafter refuse to enter into and execute the proposed contract or carry out and consummate the purchase of any form of indebtedness, as stated in the covenant in the bid and herein, shall absolutely forfeit such moneys or bank instruments to the public authority concerned and become immediately liable on the bid bond but not in excess of the penal sum therein stated.

(2) In no event shall the bidder's liability, the liability of the maker of the security instrument, or the liability on the bid bond exceed the amount specified by the public authority in the solicitation or advertisement for bids, whether the amount shall be posted in money, be stated as the amount payable in the security instrument, or as the maximum amount payable in the bid bond.

(3) With respect to bids accepted under Title 18, chapter 2, the department may waive the requirement to forfeit bid security.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 83, L. 1987.

Cross-References

Bid security, 18-2-302.

Indemnity, Title 28, ch. 11, part 3.

18-1-205. Return of bid security. The moneys or bank instruments or bid bonds, as the case may be, shall be returned to those bidders whose bids are not accepted.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).

Cross-References

Bid security, 18-2-302.

18-1-206. Effect of compliance. Nothing contained in this part shall exclude or be construed to excuse compliance with any other requirements for bonds or other or further security after acceptance of bids or following award of contract or excuse compliance with any requirements for performance bonds at any time, as such requirements may be prescribed or authorized by the laws of the state of Montana.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).

Part 3

Prepayment of Public Contractors

Part Cross-References

Public contractor's license and tax, Title 15, ch. 50.

Bids and contractor's bond, 17-5-603, 17-5-613.

18-1-301. Contractor withdrawals — deposit of obligations. (1) The contractor under any contract made or awarded by the state of Montana or any department, agency, or political subdivision thereof, including any contract for the construction, improvement, maintenance, or repair of any road or highway or the appurtenances thereto, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under such contract which are retained by the state of Montana or any department, agency, or political subdivision thereof pursuant to the terms of such contract, provided the contractor shall deposit with the contracting agency:

(a) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills;

(b) bonds or notes of the state of Montana;

(c) bonds of any political subdivision of the state of Montana of a market value not exceeding par at the time of deposit; or

(d) certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana.

(2) Deposited obligations shall be at least equal in value to the amount so withdrawn from payments retained under such contract.

History: En. Sec. 1, Ch. 194, L. 1969; amd. Sec. 1, Ch. 101, L. 1971; R.C.M. 1947, 82-4101; amd. Sec. 1, Ch. 113, L. 1985.

Cross-References

Guaranty, suretyship, and indemnity, Title 28, ch. 11.

18-1-302. Servicing of deposited obligations. After notice to the owner and surety, the contracting agency shall have the power to enter into a contract or agreement with any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor, to provide for the custodial care and servicing of any obligations deposited with it pursuant to this part. Such services shall include the safekeeping of said obligations and the rendering of all services required to effectuate the purposes of this part.

History: En. Sec. 2, Ch. 194, L. 1969; R.C.M. 1947, 82-4102; amd. Sec. 2, Ch. 113, L. 1985.

18-1-303. Interest or income on deposits to contractor. (1) The contracting agency or any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor to serve as custodian for the obligations pursuant to 18-1-302, shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligation.

(2) If deposited in the form of coupon bonds, the contracting agency or the designated custodian, pursuant to 18-1-302, shall deliver each such coupon as it matures to the contractor.

History: En. Sec. 3, Ch. 194, L. 1969; R.C.M. 1947, 82-4103; amd. Sec. 3, Ch. 113, L. 1985.

Cross-References

Interest on deposits — conformity with federal law, 17-6-104.

18-1-304. Priority of deductions from retained payments and proceeds of deposited obligation. Any amount deducted by the state of Montana or by any department, agency, or political subdivision thereof pursuant to the terms of a contract from the retained payments otherwise due to the contractor thereunder shall be deducted first from that portion of the retained payments for which no obligation has been substituted, then from the proceeds of any deposited obligation. In the latter case, the contractor shall be entitled to receive the interest, coupons, or income only from those obligations which remain on deposit after such amount has been deducted.

History: En. Sec. 4, Ch. 194, L. 1969; R.C.M. 1947, 82-4104.

Part 4

Contract Actions Against the State

Part Cross-References

Claims against state, Title 17, ch. 8, part 2.

Time for appeal in actions involving state, Rule 5, M.R.App.P. (see Title 25, ch. 21).

Limitation on contract actions, 27-2-202.

18-1-401. Jurisdiction. The district courts of the state of Montana shall have exclusive original jurisdiction to hear, determine, and render judgment on any claim or dispute arising out of any express contract entered into with the state of Montana or any agency, board, or officer thereof.

History: En. Sec. 1, Ch. 138, L. 1955; R.C.M. 1947, 83-601.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

18-1-402. Administrative procedures — exhaustion — time limitations. Whenever any contracting agency of the state of Montana provides a procedure for the settlement of any question or dispute arising between the contractor and said agency, the contractor, before proceeding to bring an action in court under the provisions of this part, must resort to such procedure within the time specified in his contract or, if no time is specified, within 90 days after the question or dispute has arisen, provided:

(1) in the case where a settlement procedure is provided by said contracting agency, all actions authorized hereunder must be commenced within 1 year after a final decision has been rendered pursuant to such settlement procedure; and

(2) in the case where no settlement procedure is provided by said contracting agency, the action must be commenced by the contractor within 1 year after the cause of action has arisen.

History: En. Sec. 2, Ch. 138, L. 1955; R.C.M. 1947, 83-602.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

Statutes of Limitations, Title 27, ch. 2.

Statute of Limitations in contracts for sale, 30-2-725.

18-1-403. Stipulations restricting enforcement void. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the provisions of this part is void.

History: En. Sec. 3, Ch. 138, L. 1955; R.C.M. 1947, 83-603.

Cross-References

Restraints upon legal proceedings void, 28-2-708.

18-1-404. Liability of state — limitations — costs. (1) The state of Montana shall be liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana shall not be liable for interest prior to or after judgment or for punitive damages.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs shall be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant, except that such costs shall not include attorney's fees.

History: En. Sec. 4, Ch. 138, L. 1955; R.C.M. 1947, 83-604; amd. Sec. 3, Ch. 402, L. 1979.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

Claims against state, Title 17, ch. 8, part 2.

18-1-405 through 18-1-410 reserved.

18-1-411. Practice and procedure. In actions under the provisions of this part, the forms of process, writs, pleadings, and motions and the practice and procedure, together with the right of appeal to the supreme court of the state of Montana, shall be the same as if the state of Montana were a private person, and provisions for counterclaim and setoff shall be the same as if the state of Montana were a private person.

History: En. Sec. 5, Ch. 138, L. 1955; R.C.M. 1947, 83-605.

Cross-References

Civil procedure, Title 25.

18-1-412. Service of process upon attorney general. In addition to any other requirement for service of process contained in Rule 4D(2)(h), M.R.Civ.P., the attorney general of the state of Montana is hereby designated as the person upon whom all process shall be served in actions under the provisions of this part.

History: En. Sec. 6, Ch. 138, L. 1955; amd. Sec. 15, Ch. 343, L. 1977; R.C.M. 1947, 83-606(part); amd. Sec. 1, Ch. 58, L. 1979.

Cross-References

Attorney General — general duties, 2-15-501.

18-1-413. Litigation — compromise. The attorney general shall have full charge of such litigation on behalf of the state of Montana. He is authorized to arbitrate, compromise, or settle any claim cognizable under this part after the institution of any suit thereon, with the approval of the court in which said suit is pending.

History: En. Sec. 6, Ch. 138, L. 1955; amd. Sec. 15, Ch. 343, L. 1977; R.C.M. 1947, 83-606(part).

Cross-References

Attorney General — general duties, 2-15-501.

18-1-414. Judgments — payment. A final judgment shall be the obligation of the state of Montana and shall be paid out of funds appropriated by the legislature next succeeding the date of judgment.

History: En. Sec. 7, Ch. 138, L. 1955; R.C.M. 1947, 83-607.

Cross-References

Claims against the state, Title 17, ch. 8, part 2.

CHAPTER 2

CONSTRUCTION CONTRACTS

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Chapter Cross-References

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Contract authority — housing authority, Title 7, ch. 15.

Public contractor's licenses, Title 15, ch. 50.

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Construction authority — regents, 20-25-402.

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Construction authority — Department of Natural Resources and Conservation — waterworks, 85-1-206, 85-1-211.

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Construction authority — Department of Fish, Wildlife, and Parks — fish hatcheries, 87-1-222, 87-3-201.

Contract authority — Board of Housing, 90-6-104.

Part 1
General Provisions

Part Cross-References

Statewide building construction standards, Title 50, ch. 60.

18-2-101. Definitions of building, costs, and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, and 18-2-122:

(1) "building" includes a building, facility, or structure:

(a) constructed or purchased wholly or in part with state moneys;

(b) at a state institution;

(c) owned or to be owned by a state agency, including the department of transportation;

(d) constructed for the use or benefit of the state with federal or private moneys as provided in 18-2-102(2)(d);

(2) "building" does not include a building, facility, or structure:

(a) owned or to be owned by a county, city, town, school district, or special improvement district;

(b) used as a component part of a highway or water conservation project;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(4) "costs" means those expenses defined in 17-5-401 and 17-5-801.

History: En. Sec. 14, Ch. 271, L. 1963; amd. Sec. 1, Ch. 24, L. 1973; amd. Sec. 81, Ch. 326, L. 1974; R.C.M. 1947, 82-3314; amd. Sec. 4, Ch. 388, L. 1979; amd. Sec. 1, Ch. 67, L. 1981; amd. Sec. 1, Ch. 491, L. 1983; amd. Sec. 1, Ch. 7, L. 1985; amd. Sec. 5, Ch. 372, L. 1985; amd. Sec. 3, Ch. 512, L. 1991.

18-2-102. Authority to construct buildings. (1) Except as provided in subsection (2), a building costing more than $50,000 may not be constructed without the consent of the legislature. When a building costing more than $50,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state.

History: En. Sec. 16, Ch. 271, L. 1963; amd. Sec. 2, Ch. 13, L. 1967; amd. Sec. 83, Ch. 326, L. 1974; R.C.M. 1947, 82-3316; amd. Sec. 2, Ch. 7, L. 1985; amd. Sec. 1, Ch. 518, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 518 in two places in (1) increased "$25,000" to "$50,000"; in (2)(a), after "building", inserted "and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency"; and made minor changes in style. Amendment effective April 24, 1993.

Cross-References

Duties of Department of Military Affairs, 10-1-102, 10-3-105.

Long-range building program bonds, Title 17, ch. 5, part 4.

Employment security building bonds, Title 17, ch. 5, part 6.

Long-range building program and budget, Title 17, ch. 7, part 2.

Revenue-producing facilities — powers of regents, 20-25-302.

Construction project at Montana State University and Eastern Montana College, 20-25-431.

Art for state buildings, Title 22, ch. 2, part 4.

18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than $50,000, the department of administration shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of the bid amount;

(d) review and approve all change orders; and

(e) accept the building when completed according to accepted plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department.

(3) Before a contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision when proposed construction costs are $25,000 or less. However, with respect to a project having a proposed cost of $25,000 or less but more than $5,000, the agency awarding the contract shall procure at least three informal bids from contractors licensed in Montana, if reasonably available.

(5) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of the buildings. "Construction" includes construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services must be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(6) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

(7) The department of military affairs may act as the contracting agency for buildings constructed under the authority of 18-2-102(2)(d); however, the department of administration may agree to act as the contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving a contract.

History: En. Sec. 17, Ch. 271, L. 1963; amd. Sec. 2, Ch. 264, L. 1969; amd. Sec. 2, Ch. 24, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 487, L. 1977; R.C.M. 1947, 82-3317; amd. Sec. 1, Ch. 16, L. 1979; amd. Sec. 15, Ch. 281, L. 1983; amd. Sec. 2, Ch. 491, L. 1983; amd. Sec. 3, Ch. 7, L. 1985; amd. Sec. 1, Ch. 137, L. 1985; amd. Sec. 1, Ch. 466, L. 1985; amd. Sec. 1, Ch. 467, L. 1985; amd. Sec. 1, Ch. 648, L. 1985; amd. Sec. 1, Ch. 350, L. 1989; amd. Sec. 2, Ch. 518, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 518 in (1) increased "$25,000" to "$50,000"; deleted former last sentence in (1)(c) that read: "However, any contract award that is protested or any contract that is awarded to a bidder other than the lowest bidder is subject to approval by the board of examiners"; in (1)(d), after "orders", deleted "up to $25,000. Any change order over $25,000 must be with the consent of the board of examiners. The department may refer change orders under $25,000 that affect the project scope or other unusual change orders to the board of examiners for consideration. The board of examiners shall act within 14 working days after processing completion by the department"; in (2) deleted second sentence that read: "However, any powers and duties subject to the approval of the board of examiners may not be delegated"; deleted former (3) that read: "For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required"; in (6) substituted "subsections (1) through (3)" for "subsections (1) through (4)"; and made minor changes in style. Amendment effective April 24, 1993.

Cross-References

Bond issues, Title 17, ch. 5.

Long-range building program bonds, Title 17, ch. 5, part 4.

Bids required — advertising, 18-2-301.

School districts — conflicts of interest, letting contracts, and calling for bids, 20-9-204.

Construction project at Montana State University and Eastern Montana College, 20-25-431.

University of Montana stadium — construction exemption, 20-25-442.

Contracts and Other Obligations, Title 28.

18-2-104. Scheduling of state building program. The department of administration shall, by careful advance planning, ordering of construction priorities, consultation with architects, and timing of bid lettings, direct the building program of the state in such a manner as to reduce to a minimum the effects of weather on construction and to stabilize as far as possible the work opportunities of the construction labor force.

History: En. Sec. 1, Ch. 116, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 78-910.

Cross-References

Long-range building program bonds, Title 17, ch. 5, part 4.

18-2-105. General powers and duties of department of administration. In carrying out powers relating to the construction of buildings, the department of administration may:

(1) inspect buildings not under construction;

(2) contract with the federal government for advance planning funds;

(3) transfer funds and authority to agencies and accept funds and authority from agencies;

(4) purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for the buildings;

(5) issue and sell bonds and other securities;

(6) maintain an inventory of all buildings;

(7) appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to ensure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against money available for construction.

(8) negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate a bid but is required to honor the bid for the time specified in the bidding documents. The department may terminate negotiations at any time. Any contract award resulting from negotiation is subject to the approval of the board of examiners.

History: En. Sec. 18, Ch. 271, L. 1963; amd. Sec. 1, Ch. 203, L. 1965; amd. Sec. 84, Ch. 326, L. 1974; R.C.M. 1947, 82-3318; amd. Sec. 1, Ch. 291, L. 1985; amd. Sec. 3, Ch. 518, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 518 inserted (3) authorizing Department to transfer funds and authority to agencies and accept funds and authority from agencies; and made minor changes in style. Amendment effective April 24, 1993.

Cross-References

Property management, Title 2, ch. 17.

Contract provisions necessary for federal funds, 18-2-313.

18-2-106. Pecuniary interest prohibited. Neither the director of administration nor any employee of the department of administration shall have a direct or indirect pecuniary interest in any contract, transaction, or project involving the construction of a building.

History: En. Sec. 21, Ch. 271, L. 1963; amd. Sec. 85, Ch. 326, L. 1974; R.C.M. 1947, 82-3321.

Cross-References

Standards of conduct for public employees, Title 2, ch. 2.

Illegal interests in contracts, 45-7-401.

18-2-107. *(Temporary)* **Deposit of capitol building grant revenues.** (1) The state treasurer shall deposit in a capital projects fund all revenue from the capitol building land grant after any deductions made under Title 77, chapter 1, part 6.

(2) The funds must be held and dedicated for the purpose of constructing capitol buildings or additions to buildings in accordance with the provisions of section 12 of The Enabling Act. *(Terminates June 30, 1995—sec. 12, Ch. 533, L. 1993.)*

18-2-107. *(Effective July 1, 1995)* **Deposit of capitol building grant revenues.** (1) The state treasurer is hereby authorized and instructed to deposit in a capital projects fund all revenue from the capitol building land grant.

(2) The funds so accumulated shall be held and dedicated for the purpose of constructing capitol buildings or additions thereto in accordance with the provisions of section 12 of The Enabling Act.

History: (1)En. Sec. 1, Ch. 120, L. 1943; amd. Sec. 49, Ch. 147, L. 1963; Sec. 78-501, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1943; amd. Sec. 50, Ch. 147, L. 1963; Sec. 78-503, R.C.M. 1947; R.C.M. 1947, 78-501, 78-503; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 6, Ch. 533, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 533 in (1), at end, inserted "after any deductions made under Title 77, chapter 1, part 6"; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

Cross-References

Deposit of funds in the hands of the State Treasurer, 17-6-101.

18-2-108. Compliance with state laws and regulations. All buildings built or leased or purchased under this title must comply with all laws, safety codes, and rules of the state of Montana.

History: En. 82-3315.8 by Sec. 8, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.8.

Cross-References

Building construction standards, Title 50, ch. 60.

18-2-109 and 18-2-110 reserved.

18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited. (1) It is the policy of the state not to engage in the practice of architecture; however, this policy may not be construed as prohibiting the department of administration from:

(a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;

(b) supervising construction as provided in 18-2-105(7); or

(c) preparing working drawings for minor projects.

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed $25,000.

History: En. Sec. 20, Ch. 271, L. 1963; amd. Sec. 1, Ch. 371, L. 1977; R.C.M. 1947, 82-3320; amd. Sec. 3, Ch. 491, L. 1983; amd. Sec. 4, Ch. 518, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 518 in (1)(b) substituted "18-2-105(7)" for "18-2-105(6)"; and made minor changes in style. Amendment effective April 24, 1993.

Cross-References

Preparation of building programs and submission to Department of Administration, 17-7-202.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Architecture, Title 37, ch. 65.

18-2-112. *(Temporary)* **Appointment of architects and consulting engineers.** (1) Except as provided in subsection (2), the department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana or its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency for which the work is to be done. The department need not appoint an architect or consulting engineer for repair or maintenance projects.

(2) The department of administration shall appoint the architect nominated by the university of Montana for the honors college program building authorized in 20-25-440. *(Terminates July 1, 1995—sec. 5, Ch. 22, L. 1993.)*

18-2-112. *(Effective July 1, 1995)* **Appointment of architects and consulting engineers.** The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency where the work is to be done. The department need not appoint an architect or consulting engineer for repair or maintenance projects.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3319; amd. Sec. 4, Ch. 491, L. 1983; amd. Sec. 2, Ch. 22, L. 1993; amd. Sec. 5, Ch. 518, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 22 in (1), at beginning, inserted exception clause; inserted (2) requiring the Department of Administration to appoint the honors college program building architect nominated by the University of Montana; and made minor changes in style. Amendment effective February 8, 1993, and terminates July 1, 1995.

Chapter 518 deleted former second sentence that read: "Such appointment shall be subject to the approval of the state board of examiners"; and made minor changes in style. Amendment effective April 24, 1993.

Cross-References

Appointment of architect, 18-3-102.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

18-2-113. Architects on public buildings to be certified. A contract for the employment of or the rendering of professional services by any person relating to the planning or construction of public buildings or other public works or improvements may not be entered into by this state or its agencies or a county, city, or school district in this state unless the person is the holder in good standing of a certificate granted by the board of architects entitling him to practice architecture in this state.

History: En. Sec. 1, Ch. 190, L. 1953; amd. Sec. 32, Ch. 350, L. 1974; amd. Sec. 6, Ch. 544, L. 1977; R.C.M. 1947, 66-113.

Cross-References

Appointment of architect, 18-3-102.

Licensing of architects, Title 37, ch. 65, part 3.

Contractors to be licensed, 37-71-203.

18-2-114. Seal and signature of architect on plans. All architectural plans and specifications for public buildings of the state of Montana or any agency thereof or of any county, city, or school district of the state shall bear the seal and signature of the architect responsible therefor.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967; amd. Sec. 7, Ch. 544, L. 1977; R.C.M. 1947, 66-114(part).

Cross-References

Seal of architect, 37-65-308.

18-2-115. Repealed. Sec. 12, Ch. 388, L. 1979.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967; amd. Sec. 7, Ch. 544, L. 1977; R.C.M. 1947, 66-114(part).

18-2-116 through 18-2-120 reserved.

18-2-121. Engineer or land surveyor to supervise project. This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof shall not engage in the practice of engineering or land surveying involving either public or private property without the project being under the direct charge and supervision of a professional engineer for engineering projects or land surveyor for all land surveying projects, as provided for the practice of the respective professions by Title 37.

History: En. 66-2363 by Sec. 11, Ch. 366, L. 1975; R.C.M. 1947, 66-2363(part).

Cross-References

Licensing engineers and land surveyors, Title 37, ch. 67, part 3.

18-2-122. Plans to bear seal. This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof may not accept plans and specifications for public buildings, water systems and storage facilities, sewerage systems, wastewater disposal projects, swimming pools, recreational facilities, and similar type projects which may have a direct bearing on the public health and safety for approval unless they bear the seal of the professional engineer for engineering projects or the professional land surveyor for land surveying projects or licensed architect for architectural projects, as provided for the practice of the respective professions by Title 37.

History: En. 66-2363 by Sec. 11, Ch. 366, L. 1975; R.C.M. 1947, 66-2363(part); amd. Sec. 24, Ch. 83, L. 1989.

Cross-References

Seal of architect, 37-65-308.

Issuance of certificates — seal of engineer or land surveyor — enrollment card for trainees, 37-67-314.

Penalty for failure to require seal, 37-67-332.

Part 2

Performance, Labor, and Materials Bonds

Part Cross-References

Bond of contractor in rural improvement district, 7-12-2138.

County road improvement district contracts — bonds, 7-14-2717.

Bids and contractor's bonds, 17-5-603, 17-5-613.

Contractor's bond for wages, 39-3-703, 39-3-706.

Highways — bidder's security — contractor's bond, 60-2-113.

18-2-201. Bonding requirements. (1) Except as otherwise provided in 85-1-219 and subsections (4) through (6) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body contracts with any person or corporation to do any work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the corporation, person, or persons with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that the corporation, person, or persons shall:

(a) faithfully perform all of the provisions of the contract;

(b) pay all laborers, mechanics, subcontractors, and material suppliers; and

(c) pay all persons who supply the corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for performing the work.

(2) A copy of the bond must be filed with the county clerk and recorder of the county in which the work is to be performed or the improvement is to be made or, if the work is to be performed or the improvement is to be made in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case the bond must be filed with the city or town clerk.

(3) Notwithstanding the provisions of subsections (1) and (2), the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or

(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

(4) Notwithstanding the provisions of subsections (1) and (2), any board, council, commission, trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu of a bond from a licensed surety company, accept a good and sufficient bond with two or more sureties acceptable to the governmental body.

(5) Except as provided in subsection (6), the state or other governmental entity may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than $5,000.

(6) A school district may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than $7,500.

History: En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; R.C.M. 1947, 6-401(part); amd. Sec. 1, Ch. 602, L. 1981; amd. Sec. 1, Ch. 147, L. 1985; amd. Sec. 2, Ch. 498, L. 1985; amd. Sec. 1, Ch. 250, L. 1987; amd. Sec. 59, Ch. 370, L. 1987; amd. Sec. 1, Ch. 236, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 236 in (1), near beginning, extended reference to subsection (6); at beginning of (5) inserted exception clause; inserted (6) allowing waiver of certain statutory requirements for school district projects costing less than $7,500; and made minor changes in style. Amendment effective March 31, 1993.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

18-2-202. Failure to require bond — waiver of bond. If any board, council, commission, trustee, or body acting for the state or any board of county commissioners or any mayor and common council of any incorporated city or town or tribunal transacting the business of any such municipal corporation waives or fails to take such bond, cash, checks, drafts, money orders, or certificates of deposit as herein required, the state or such county, incorporated city or town, or other municipal corporation shall be liable to the persons mentioned in 18-2-201 to the full extent and for the full amount of all of such debts so contracted by any such subcontractor as well as such contractor.

History: En. Sec. 3, Ch. 20, L. 1931; re-en. Sec. 5668.43, R.C.M. 1935; R.C.M. 1947, 6-403; amd. Sec. 2, Ch. 602, L. 1981; amd. Sec. 2, Ch. 250, L. 1987.

Cross-References

Liens, Title 71, ch. 3.

18-2-203. Amount and terms of bond. The bond mentioned in 18-2-201 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement and shall be to the state of Montana, except in cases of cities and towns, in which case such municipality may by general ordinance fix and determine the amount of such bond and to whom such bond shall run, provided that the same shall not be for a less amount than 25% of the contract price of any such improvement and may designate that the same shall be payable to such city or town and not to the state of Montana.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

18-2-204. Right of action on bond — notice. (1) All such persons mentioned in 18-2-201 shall have a right of action in his or her or their own name or names on any bond furnished under the terms of this part for work done by such laborers or mechanics and for provender, materials, supplies, provisions, or goods supplied and furnished in the prosecution of such work or the making of such improvements, provided that such persons shall not have any right of action on such bond for any sum whatever unless within 90 days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer, mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials, provisions, or goods for the prosecution of such work or the making of such improvement shall present to and file with such board, council, commission, trustees, or body acting for the state, county, or municipality or other public body, city, town, or district a notice in writing in substance as follows:

"TO (here insert the name of the state, county, or municipality or other public body, city, town, or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman or person claiming to have furnished labor, materials, or provisions for or upon such contract or work) has a claim in the sum of .... dollars (here insert the amount) against the bond taken from .... (here insert the name of the principal and surety or sureties upon such bond) for the work of .... (here insert a brief mention or description of the work concerning which said bond was taken).

(Here to be signed) ...."

(2) Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part).

Cross-References

Public records generally, Title 2, ch. 6, part 1.

Suretyship, Title 28, ch. 11, part 4.

Liens, Title 71, ch. 3.

18-2-205. Effect of dealing with subcontractor. Any corporation, person, or persons performing such services or furnishing such provender, provisions, supplies, or material to any subcontractor shall have the same right under the provisions of such bond as if such work, services, provender, provisions, supplies or material was furnished to the original contractor.

History: En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; R.C.M. 1947, 6-401(part).

Cross-References

Liens, Title 71, ch. 3.

18-2-206. Notice to contractor concerning subcontractor. (1) Every person, firm, or corporation furnishing provender, provisions, materials, or supplies to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state or any county, city, town, district, municipality, or other public body shall, not later than 30 days after the date of the first delivery to any subcontractor or agent of any person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, give a notice of a right of action on the bond.

(2) (a) The notice must be delivered personally or sent by certified mail to the contractor.

(b) The notice must be in writing and state:

(i) that it is a notice of a right of action on the bond;

(ii) that the person, firm, or corporation giving the notice has commenced to deliver provender, provisions, materials, or supplies;

(iii) the name of the subcontractor or agent who placed the order or to whom the provender, provisions, materials, or supplies were delivered; and

(iv) that the contractor and his bond will be held for the unpaid price if the supplier is not paid.

(3) To have a right of action against the contractor and his bond under this part, a person, firm, or corporation must give the written notice required by this section in substantially this form. Any other type of actual or constructive notice is not sufficient.

(4) No suit or action may be maintained in any court against the contractor or his bond to recover for such provender, provisions, material, or supplies or any part thereof unless the provisions of this part have been complied with.

History: **En. Sec. 2, Ch. 20, L. 1931; re-en. Sec. 5668.42, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1967; R.C.M. 1947, 6-402; amd. Sec. 1, Ch. 637, L. 1987.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Liens, Title 71, ch. 3.

18-2-207. Costs — attorneys' fees. In any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the prevailing party shall be entitled to recover, in addition to all other costs, attorneys' fees in such sum as the court shall adjudge reasonable, provided, however, that no attorneys' fees shall be allowed in any suit or action brought or instituted before the expiration of 30 days following the date of filing of the notice hereinbefore mentioned.

History: **En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part).**

Cross-References

Costs and attorneys' fees, Title 25, ch. 10, parts 1 through 3.

Suretyship, Title 28, ch. 11, part 4.

18-2-208. Exceptions. (1) The provisions of this part shall not apply to any money loaned or advanced to any such contractor, subcontractor, or other person in the performance of any such work.

(2) Any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby and not in conflict herewith.

(3) Nothing herein referred to with reference to the giving of such notice within 90 days from and after completion of the contract and acceptance of the work shall be construed to prevent or delay the payment of moneys due the contractor under the terms and conditions specified in his contract.

History: **(1)En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; Sec. 6-401, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; Sec. 6-404, R.C.M. 1947; R.C.M. 1947, 6-401(part), 6-404(part).**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Part 3

Contract Requirements and Restrictions

Part Cross-References

Illegal interest in contracts, 45-7-401.

18-2-301. Bids required — advertising. (1) It is unlawful for any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is $25,000 or more without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform the work and stating the time and place bids will be considered.

(2) All work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state.

(4) This section does not apply to work done by inmates at an institution in the department of corrections and human services.

History: (1) thru (3)En. Sec. 1, Ch. 149, L. 1927; re-en. Sec. 259.1, R.C.M. 1935; amd. Sec. 1, Ch. 142, L. 1961; amd. Sec. 1, Ch. 97, L. 1977; Sec. 82-1131, R.C.M. 1947; (4)En. Sec. 2, Ch. 142, L. 1961; amd. Sec. 92, Ch. 199, L. 1965; amd. Sec. 54, Ch. 326, L. 1974; Sec. 82-1131.1, R.C.M. 1947; R.C.M. 1947, 82-1131, 82-1131.1; amd. Sec. 2, Ch. 16, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 518, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 518 in (1), near beginning after "unlawful for", deleted "the board of examiners or"; in (3), after "If", substituted "responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state" for "no bid for such work is accepted, the work may not be done or accomplished. The work may be readvertised from time to time until awarded to a qualified competitive bidder"; and made minor changes in style. Amendment effective April 24, 1993.

Cross-References

Supervision of construction of buildings, 18-2-103.

18-2-302. Bid security. (1) Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid, such security to consist of cash, cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana, or a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana.

(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than $5,000.

History: En. Sec. 3, Ch. 149, L. 1927; re-en. Sec. 259.3, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1977; amd. Sec. 1, Ch. 487, L. 1977; R.C.M. 1947, 82-1133; amd. Sec. 3, Ch. 250, L. 1987.

Cross-References

Advertisement for bid to specify required security, 18-1-202.

Form of security, 18-1-203.

Forfeiture — bidder's liability, 18-1-204.

Suretyship, Title 28, ch. 11, part 4.

Acceptance and issuance of drafts and letters of credit, 32-1-437.

Certified checks, 32-1-441.

18-2-303 through 18-2-310 reserved.

18-2-311. Repealed. Sec. 3, Ch. 87, L. 1985.

History: En. Sec. 1, Ch. 141, L. 1967; R.C.M. 1947, 82-1927.

18-2-312. Excusable delays. A public contractor shall not be considered to be working beyond contract time if the delay is caused by an accident or casualty produced by physical cause which is not preventable by human foresight, i.e., any of the misadventures termed an "act of God".

History: En. Sec. 2, Ch. 141, L. 1967; R.C.M. 1947, 82-1928.

Cross-References

When delay or failure to perform or offer to perform excused, 28-1-1301.

18-2-313. Contract provisions necessary for federal funds. In all contracts let for state, county, municipal, and school construction, repair, or maintenance work under any of the laws of this state when the funds for the projects are supplied in whole or in part from funds of the United States government, it is lawful to insert in each of the contracts any provisions that are or will be necessary to have such contract conform to any federal statutes or regulation under which such funds are supplied.

History: En. Sec. 1, Ch. 43, Ex. L. 1933; re-en. Sec. 269.1, R.C.M. 1935; amd. Sec. 2, Ch. 97, L. 1977; R.C.M. 1947, 82-1147.

Cross-References

Federal revenues and endowments, Title 17, ch. 3.

Authority to construct buildings, 18-2-102.

General powers and duties of Department of Administration, 18-2-105.

Preference of Montana labor in public works — wages — federal exception, 18-2-403.

18-2-314. Cost-plus system invalid. Any contracts made by, on behalf of, or for the state of Montana which shall directly or indirectly recognize the cost-plus system or principle shall be void and of no effect and this section shall stand as a notice of the invalidity of any such contract.

History: En. Sec. 5, Ch. 149, L. 1927; re-en. Sec. 259.5, R.C.M. 1935; R.C.M. 1947, 82-1135.

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

What conditions void, 28-2-707.

18-2-315. State purchasing not affected. Nothing contained in 18-2-301, 18-2-302, or 18-2-314 alters, modifies, or changes the laws providing for or relating to department of administration functions relating to state purchasing.

History: En. Sec. 6, Ch. 149, L. 1927; re-en. Sec. 259.6, R.C.M. 1935; amd. Sec. 55, Ch. 326, L. 1974; R.C.M. 1947, 82-1136.

Cross-References

Procurement generally, Title 18, ch. 4.

Special purchasing conditions, Title 18, ch. 5.

Part 4

Special Conditions — Labor

Part Cross-References

University of Montana stadium — construction exemption, 20-25-442.

Wage protection for employees of mineral and oil industry, 39-3-501.

Hours of labor for employees on state-aided projects, 39-4-107.

Letting of contracts on state and federal-aid highways, 60-2-111.

18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) "District" means a prevailing wage rate district established as provided in 18-2-411.

(5) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(6) "Labor" means all services in excess of $25,000 performed in construction, maintenance, or remodeling work in a state, county, municipal, school district, or political subdivision project and does not include engineering, superintendence, management, or office or clerical work.

(7) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(8) "Work of a similar character" means work on private or commercial projects as well as work on public projects.

History: (1), (4)En. Sec. 2, Ch. 102, L. 1931; re-en. Sec. 3043.2, R.C.M. 1935; Sec. 41-702, R.C.M. 1947; (2), (3)En. Sec. 1, Ch. 139, L. 1981; (5)En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; Sec. 41-701, R.C.M. 1947; R.C.M. 1947, 41-701(part), 41-702; amd. Sec. 1, Ch. 139, L. 1981; amd. Sec. 2, Ch. 561, L. 1987; amd. Sec. 2, Ch. 609, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 609 in (5), (7)(a)(ii), and (7)(b), after "contributions", inserted "that meet(s) the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor"; in two places in (5), in two places in (7)(a)(i), and in (7)(a)(ii), after "heavy", inserted "and"; in (6), after "remodeling", inserted "work" and after "school" substituted "district, or political subdivision project" for "work"; and made minor changes in style. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Cross-References

Labor — wages and wage protection, Title 39, ch. 3.

Freedom from discrimination in public contracts, 49-3-207.

18-2-402. Standard prevailing rate of wages. (1) The Montana commissioner of labor may determine the standard prevailing rate of wages applicable to public works contracts under this part. The commissioner shall undertake to keep and maintain copies of collective bargaining agreements and other information on which the rates are based.

(2) The provisions of this part do not apply in those instances where the standard prevailing rate of wages is determined pursuant to federal law.

(3) In no instances where this part is applicable shall the standard prevailing rate of wage be determined to be greater than the applicable rate of wage in the area for the particular work in question as negotiated under existing and current collective bargaining agreements.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(1), (4), (5); amd. Sec. 3, Ch. 561, L. 1987.

Cross-References

Labor — wages and wage protection, Title 39, ch. 3.

18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception. (1) In any contract let for state, county, municipal, school, or heavy and highway construction, services, repair, or maintenance work under any law of this state, there must be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy and highway construction, must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for the project.

(4) A contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993, must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(5) A contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the provisions described in subsections (1) through (4) in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(6) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(part); amd. Sec. 2, Ch. 58, L. 1979; amd. Sec. 2, Ch. 139, L. 1981; amd. Sec. 4, Ch. 561, L. 1987; (4)En. Sec. 1, Ch. 420, L. 1991; amd. Sec. 3, Ch. 464, L. 1993; amd. Sec. 3, Ch. 609, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 464 inserted (2)(a) requiring payment of travel allowance; at end of (2)(b) deleted "and travel allowance provisions"; inserted (2)(b)(i) requiring that the standard prevailing wage rate meet federal program criteria; in (4), near beginning after "financed", substituted "from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993" for "in whole or in part by tax-exempt industrial revenue bonds" and at end, after "being performed", inserted "unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 609 in (1), (2), and in two places in (3), after "heavy", inserted "and"; inserted (2)(a) requiring payment of travel allowance; at end of (2)(b) deleted "and travel allowance provisions"; inserted (2)(b)(i) requiring that the standard prevailing wage rate meet federal program criteria; and made minor changes in style. Amendment effective May 3, 1993.

A style change in (5) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Cross-References

State contracts to lowest resident bidder, 18-1-102.

Impartiality to be shown in letting contracts — preference to residents, 18-1-111.

Montana product preference provisions, 18-1-112.

Authority to construct buildings, 18-2-102.

General powers and duties of Department of Administration, 18-2-105.

Contract provisions necessary for federal funds, 18-2-313.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

Nondiscrimination provision in all public contracts, 49-3-207.

18-2-404. Approval of contract — bond. (1) All public works contracts under this part shall be approved in writing by the legal adviser of the contracting state, county, municipal corporation, school district, assessment district, or special improvement district body or officer prior to execution by the contracting public officer or officers.

(2) In all contracts entered into under the provisions of this part at least $1,000 of the contract price shall be withheld at all times until the termination of the contract.

History: (1)En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; Sec. 41-701, R.C.M. 1947; (2)En. Sec. 3, Ch. 102, L. 1931; re-en. Sec. 3043.3, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1961; Sec. 41-703, R.C.M. 1947; R.C.M. 1947, 41-701(part), 41-703(part).

Cross-References

Bonding requirements, 18-2-201.

Executed versus executory contracts, 28-2-104.

What contracts must be in writing, 28-2-903.

18-2-405. Repealed. Sec. 8, Ch. 609, L. 1993.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(part).

18-2-406. Posting wage scale. Contractors, subcontractors, and employers who are performing work or providing services under public works contracts as provided in this part shall post in a prominent and accessible site on the project or work area, not later than the first day of work, a legible statement of all wages to be paid to the employees employed on such site or work area.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(2).

Cross-References

Wages and wage protection, Title 39, ch. 3.

18-2-407. Forfeiture for failure to pay standard prevailing wage. (1) Any contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the unemployment insurance administration account, as provided in 39-51-406, and must be used for enforcement. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner of labor on behalf of all the underpaid workers from

maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that appeal of the hearing officer's decision is made directly to district court rather than to the board of personnel appeals.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(3); amd. Sec. 5, Ch. 554, L. 1989; amd. Sec. 4, Ch. 609, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 609 in (1), in first sentence after "forfeit to the", substituted remainder of sentence relating to 20% penalty rate, second sentence relating to deposition of money in unemployment insurance administration account, and third sentence requiring forfeiture of wages owed plus $25 a day for underpaying employee for "contracting agency the sum of $25 a day for each worker underpaid"; at end of (2), after "part 2", inserted exception clause; and made minor changes in style. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Cross-References

Payment of wages, Title 39, ch. 3, part 2.

Contractors' bonds for wages and benefits, Title 39, ch. 3, part 7.

18-2-408. Renumbered 18-2-432 by Code Commissioner, 1985.

18-2-409. Montana residents to be employed on state construction contracts. (1) On any state construction project funded by state or federal funds, except a project partially funded with federal aid money from the United States department of transportation or where residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, at least 50% of the work must be performed by bona fide Montana residents, as defined in 18-2-401.

(2) For any contract awarded for a state construction project, except a project partially funded with federal aid money from the United States department of transportation or where residency preference laws are specifically prohibited by federal law, there must be inserted in the bid specification and the contract a provision, in language approved by the commissioner of labor and industry, implementing the requirements of subsection (1). The bid specification and the contract must provide that at least 50% of the workers on the project will be bona fide Montana residents. If there are two or more contracts and due to a lack of qualified personnel a contractor cannot guarantee that at least 50% of his workers will be Montana residents, his contract must provide that the percentage the commissioner of labor and industry believes possible will be Montana residents and one or more of the other contracts must provide for a higher percentage of Montana residents so that 50% of the workers on the project will be Montana residents.

(3) The commissioner of labor and industry shall enforce this section and investigate complaints of its violation and may adopt rules to implement this section.

History: En. Sec. 1, Ch. 549, L. 1985.

18-2-410 reserved.

18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402.

History: En. Sec. 1, Ch. 561, L. 1987; amd. Sec. 5, Ch. 609, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 609 in (1), after "heavy", inserted "and". Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

18-2-412. Method for payment of standard prevailing wage. (1) To fulfill the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the United States department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, travel, or other bona fide programs approved by the United States department of labor, that is applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the United States department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department.

History: En. Sec. 1, Ch. 609, L. 1993.

Compiler's Comments

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Effective Date: Section 11, Ch. 609, L. 1993, provided that this section is effective on passage and approval. Approved May 3, 1993.

18-2-413 through 18-2-420 reserved.

18-2-421. Notice. When a public works project is accepted by the public contracting agency, a notice of acceptance and the completion date of the project shall be sent to the department. However, in the case of projects that amount to $50,000 or less in cost, the notice of acceptance and the completion date of the project is not required unless the department requests that information. The 90-day limitation for filing an action in district court as provided in 18-2-407 does not begin until the public contracting agency notifies the department of its acceptance of the public works project.

History: En. Sec. 3, Ch. 139, L. 1981.

18-2-422. Bid specification and contract to contain prevailing wage rate. All bid specifications and contracts for public works projects must contain a provision stating for each job classification the prevailing wage rate, including fringe benefits, that the contractors and subcontractors must pay during construction of the project.

History: En. Sec. 4, Ch. 139, L. 1981.

18-2-423. Submission of payroll records. If a complaint is filed with the department alleging noncompliance with 18-2-422, the department may require the project to submit to it certified copies of the payroll records for workers employed on that project. A contractor or a subcontractor shall pay employees receiving an hourly wage on a weekly basis. If a wage violation complaint is filed with the department, the contractor or subcontractor shall provide the employee's payroll records to the department within 5 days of receiving the payroll request from the department.

History: En. Sec. 5, Ch. 139, L. 1981; amd. Sec. 6, Ch. 609, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 609 inserted second sentence requiring employees receiving hourly wage to be paid weekly and third sentence requiring submission of employee payroll records to Department within 5 days of request after complaint filed. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

18-2-424. Enforcement. If a contractor or a subcontractor refuses to submit payroll records requested by the department pursuant to 18-2-423, the commissioner or his authorized representative may issue subpoenas compelling the production of those records.

History: En. Sec. 6, Ch. 139, L. 1981.

18-2-425 through 18-2-430 reserved.

18-2-431. Rulemaking authority. The commissioner may adopt rules necessary to implement this part.

History: En. Sec. 1, Ch. 234, L. 1985.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

18-2-432. Penalty for violation. (1) If a person, firm, or corporation fails to comply with the provisions of this part, the state, county, municipality, school district, or officer of a political subdivision that executed the contract shall retain $1,000 of the contract price as liquidated damages for the violation of the terms of the contract and the money must be credited to the proper funds of the state, county, municipality, school district, or political subdivision.

(2) Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any contracts or subcontracts that are subject to the provisions of this chapter.

(3) Whenever an action has been instituted in a district court in this state against any person, firm, or corporation for the violation of this part, the court in which the action is pending is authorized to issue an injunction to restrain the person, firm, or corporation from proceeding with a contract with the state, county, municipality, school district, or political subdivision, pending the final determination of the instituted action.

History: En. Sec. 3, Ch. 102, L. 1931; re-en. Sec. 3043.3, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1961; R.C.M. 1947, 41-703(part); Sec. 18-2-408, MCA 1983; redes. 18-2-432 by Code Commissioner, 1985; amd. Sec. 7, Ch. 609, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 609 in two places in (1), after "county", changed "municipal" to "municipality", near middle, after "school", substituted "district, or officer of a political subdivision that" for "officers who have", and at end, after "school", substituted "district, or political subdivision" for "districts"; substituted (2) providing maximum ineligibility of 3 years for labor standards violation for former language that read: "Any firm or corporation violating the provisions of this part shall have his or its license suspended in the manner prescribed by 37-71-301 for a period of 1 year after the date of final judgment of said violation by any district court or the supreme court"; in (3), after "county", changed "municipal" to "municipality" and after "school" substituted "district, or political subdivision" for "districts"; and made minor changes in style. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Cross-References

Damages, Title 27, ch. 1, part 2.

Injunctions, Title 27, ch. 19.

Contractors' bonds for wages and benefits, Title 39, ch. 3, part 7.

CHAPTER 3

STATE BUILDING LEASES

Part 1 — General Provisions

18-3-101. Authority to lease with option to purchase.
18-3-102. Appointment of architect.
18-3-103. Awarding contract.
18-3-104. Contract provisions.
18-3-105. Location of building.
18-3-106. Security pledge.
18-3-107. Rent payments.

Chapter Cross-References

Illegal interest in contracts, 45-7-401.

Statewide building construction standards, Title 50, ch. 60.

Part 1

General Provisions

Part Cross-References

State debt — limitations, Art. VIII, sec. 8, Mont. Const.

Lease of University of Montana property for stadium authorized, 20-25-441.

18-3-101. Authority to lease with option to purchase. When authorized by a vote of two-thirds of the members of each house of the legislature, the department of administration shall have the authority, as part of the long-range building program, to enter into a rental contract which provides an option to purchase a building to be used by the state or any department of state government.

History: En. 82-3315.1 by Sec. 1, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.1.

Cross-References

Long-range building program bonds, Title 17, ch. 5, part 4.

General powers and duties of Department of Administration, 18-2-105.

18-3-102. Appointment of architect. The department of administration may appoint an architect to draw plans and specifications for the construction of a building authorized by this chapter, subject to the approval of the board of examiners.

History: En. 82-3315.4 by Sec. 4, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.4.

Cross-References

Appointment of architects and consulting engineers, 18-2-112.

18-3-103. Awarding contract. In awarding a contract, the department of administration shall follow the same procedures that are required for the award of a contract to construct a state-owned building. The department shall have the authority to reject any and all bids.

History: En. 82-3315.7 by Sec. 7, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.7.

Cross-References

Construction contracts — general provisions, Title 18, ch. 2, part 1.

Bids required — advertising, 18-2-301.

18-3-104. Contract provisions. The rental contract shall be for a period not to exceed 20 years with an option to purchase at the end of specific periods determined by the department of administration and clearly defined in the contract for each individual project. The option to purchase at the end of the contract period shall not exceed the amount of $50,000. The contract shall provide for the appointment of a trustee with sufficient powers to protect the state's interest in the building and any property conveyed as a building site. The contract shall contain such other provisions as determined by the department of administration to be necessary.

History: **En. 82-3315.5 by Sec. 5, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.5.**

Cross-References

Contracts — formation and interpretation, Title 28, ch. 2 and 3.

Trust administration, Title 72, ch. 34.

18-3-105. Location of building. The building shall be located as determined by the terms of the call for bids. If any such contract requires the sale or lease of any interest in state lands, the contract must have prior approval of the board of land commissioners.

History: **En. 82-3315.2 by Sec. 2, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.2.**

Cross-References

Board of Land Commissioners — power to sell, lease, or exchange certain state lands, 77-1-204.

18-3-106. Security pledge. To insure an adequate security provision for the lessor, the full faith and credit and taxing powers of the state of Montana are pledged in the amount necessary for the payment of rent incurred pursuant to a contract authorized by this part.

History: **En. 82-3315.3 by Sec. 3, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.3.**

Cross-References

Tax power inalienable, Art. VIII, sec. 2, Mont. Const.

Taxation, Title 15.

18-3-107. Rent payments. Each month the department or departments occupying the building shall pay rent in an amount determined by the department of administration to be sufficient to pay the total cost of renting and maintaining the building. All rents collected shall be deposited in a separate account and are hereby appropriated for the purpose of paying the contracted rental payments and the expense of maintaining the building. At any time the amount in the account is insufficient to pay a rental payment that is due, the department of administration is authorized to transfer from the general fund an amount sufficient to make the payment.

History: **En. 82-3315.6 by Sec. 6, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.6.**

Cross-References

Fund structure, 17-2-102.

Rights of tenant for years or at will, 70-16-104.

CHAPTER 4

MONTANA PROCUREMENT ACT

Part 1 — General Provisions

18-4-101. Repealed.
18-4-102. Repealed.
18-4-103. Repealed.
18-4-104. Renumbered 18-4-133 by Code Commissioner, 1983.
18-4-105. Renumbered 18-4-141 by Code Commissioner, 1983.
18-4-106 through 18-4-110 reserved.
18-4-111. Renumbered 2-17-501 by Code Commissioner, 1983.
18-4-112 through 18-4-120 reserved.
18-4-121. Short title.
18-4-122. Purpose.
18-4-123. Definitions.
18-4-124. Local government adoption of procurement provisions.
18-4-125. Collection of data concerning public procurement.
18-4-126. Public access to procurement information — records — retention.
18-4-127 through 18-4-130 reserved.
18-4-131. Supplementary general principles of law applicable — requirement of good faith.
18-4-132. Application.
18-4-133. Purchases exempt from general requirements.
18-4-134 through 18-4-140 reserved.
18-4-141. Contract transfers and collusion prohibited — violations and penalty.

Part 2 — Duties of Department

18-4-201 through 18-4-214. Repealed.
18-4-215 through 18-4-220 reserved.
18-4-221. General procurement authority and duties of department — rules.
18-4-222. Delegation of authority by department.
18-4-223. State procurement rules — delegation — existing rights.
18-4-224. Contract clauses — rules.
18-4-225. Cost principles — rules.
18-4-226. Surplus supply — rules.
18-4-227 through 18-4-230 reserved.
18-4-231. Definition of specification.
18-4-232. Specifications — rules.
18-4-233. Using agencies' advice.
18-4-234. Competition.
18-4-235 through 18-4-240 reserved.
18-4-241. Authority to remove or suspend from vendors' list.
18-4-242. Remedies prior to and after award.

Part 3 — Procurement Procedure

18-4-301. Definitions.
18-4-302. Methods of source selection.
18-4-303. Competitive sealed bidding.
18-4-304. Competitive sealed proposals.
18-4-305. Small purchases.
18-4-306. Sole source procurement — records.
18-4-307. Cancellation of invitations for bids or requests for proposals.
18-4-308. Nonresponsibility of bidders and offerors — nondisclosure.
18-4-309. Prequalification of suppliers.
18-4-310. Types of contracts.
18-4-311. Approval of accounting system.
18-4-312. Bid and contract performance security.
18-4-313. Contracts — terms, extensions, and time limits.

18-4-314. Reporting of anticompetitive practices.

Part 4 — Cooperative Purchasing

18-4-401. Definitions.
18-4-402. Cooperative purchasing authorized.
18-4-403. Sale, acquisition, or use of supplies by a public procurement unit.
18-4-404. Cooperative use of supplies or services.
18-4-405. Joint use of facilities.
18-4-406. Information and services — fees.
18-4-407. Review of procurement requirements.

Chapter Cross-References

Officer not to be purchaser in sale, 2-2-202.

Property management, Title 2, ch. 17.

Duplicating and copying facilities — central telephone switchboard, 2-17-301.

Communications equipment, 2-17-302.

Audit services, legislative, 5-13-411.

Purchase of rural improvement districts, 7-12-2131 through 7-12-2137.

Encumbrance of purchase orders, 17-7-303.

Failure to make timely payment — interest assessment on amounts due, 17-8-242.

Interest assessed on amounts overdue, 17-8-242.

State purchasing not affected, 18-2-315.

Highway Patrol equipment, 44-1-303.

Attorney General authorized to purchase equipment for teletypewriter communications system, 44-2-302, 44-2-312 through 44-2-316.

Gifts to public servants having discretionary function in contract letting, 45-7-104.

Illegal interests in contracts, 45-7-401.

Freedom from discrimination in public contracts, 49-3-207.

Prison industries — products, 53-30-131, 53-30-133.

Department of Fish, Wildlife, and Parks — land acquisition, 87-1-209, 87-1-301.

Department of Fish, Wildlife, and Parks — waterfowl stamp artwork — exemption, 87-2-412.

Part 1
General Provisions

18-4-101. Repealed. Sec. 53, Ch. 519, L. 1983.

History: (1), (2)En. 82-1902.1 by Sec. 8, Ch. 97, L. 1977; Sec. 82-1902.1, R.C.M. 1947; (3)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; Sec. 82-1917, R.C.M. 1947; R.C.M. 1947, 82-1902.1, 82-1917(part); amd. Sec. 1, Ch. 597, L. 1979.

18-4-102. Repealed. Sec. 53, Ch. 519, L. 1983.

History: (1), (2)En. Sec. 8, Ch. 66, L. 1923; re-en. Sec. 293.8, R.C.M. 1935; amd. Sec. 2, Ch. 301, L. 1971; amd. Sec. 1, Ch. 496, L. 1973; amd. Sec. 9, Ch. 242, L. 1974; amd. Sec. 73, Ch. 326, L. 1974; Sec. 82-1918, R.C.M. 1947; (3)En. Sec. 11, Ch. 66, L. 1923; re-en. Sec. 293.11, R.C.M. 1935; amd. Sec. 76, Ch. 326, L. 1974; Sec. 82-1921, R.C.M. 1947; R.C.M. 1947, 82-1918(1), 82-1921(part); amd. Sec. 2, Ch. 597, L. 1979.

18-4-103. Repealed. Sec. 2, Ch. 175, L. 1979.

History: En. 82-1915.1 by Sec. 70, Ch. 326, L. 1974; R.C.M. 1947, 82-1915.1.

18-4-104. Renumbered 18-4-133 by Code Commissioner, 1983.

18-4-105. Renumbered 18-4-141 by Code Commissioner, 1983.

18-4-106 through 18-4-110 reserved.

18-4-111. Renumbered 2-17-501 by Code Commissioner, 1983.

18-4-112 through 18-4-120 reserved.

18-4-121. Short title. This chapter may be cited as the "Montana Procurement Act".

History: En. Sec. 1, Ch. 519, L. 1983.

18-4-122. Purpose. The underlying purposes and policies of this chapter are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system; and

(8) provide safeguards for the maintenance of a procurement system of quality and integrity.

History: En. Sec. 2, Ch. 519, L. 1983.

18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes which the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means a duly authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from such an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product. Printing does not include rebinding or repair by a library or an office, department, board, or commission thereof of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(16) "Procurement officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of his authority.

(17) "Purchasing agency" means any governmental body, other than the department, which is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term does not include consulting services as defined in 18-8-102, those services listed in 18-8-103, employment agreements or collective bargaining agreements, the provision by providers of human services regulated by a state agency, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state which utilizes any supplies or services procured under this chapter.

History: En. Sec. 3, Ch. 519, L. 1983.

18-4-124. Local government adoption of procurement provisions. A political subdivision or school district may adopt any or all parts of this chapter and the accompanying rules promulgated by the department.

History: En. Sec. 45, Ch. 519, L. 1983.

18-4-125. Collection of data concerning public procurement. All using agencies shall cooperate with the department in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies and services, and the department may employ trained personnel as necessary to carry out this function. All using agencies shall furnish such reports as the department may require concerning usage, needs, and stocks on hand, and the department may prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting of supplies and services.

History: En. Sec. 11, Ch. 519, L. 1983.

18-4-126. Public access to procurement information — records — retention. (1) Procurement information is a public writing and must be available to the public as provided in 2-6-102.

(2) All procurement records must be retained, managed, and disposed of in accordance with the state records management program, Title 2, chapter 6.

(3) Written determinations required by this chapter must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program.

History: En. Secs. 5, 26, Ch. 519, L. 1983.

Cross-References

Right of participation, Art. II, sec. 8, Mont. Const.

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

18-4-127 through 18-4-130 reserved.

18-4-131. Supplementary general principles of law applicable — requirement of good faith. (1) Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the Uniform Commercial Code, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy, supplement the provisions of this chapter, except that writs of mandamus and prohibition issued pursuant to Title 27, chapters 26 and 27, may not be used as a remedy for violations of this chapter.

(2) This chapter requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

History: En. Sec. 4, Ch. 519, L. 1983.

Cross-References

Contracts, Title 28, ch. 2, 3.

Agency, Title 28, ch. 10.

Uniform Commercial Code, Title 30, ch. 1 through 9.

18-4-132. Application. (1) Except as provided in 18-4-313, which applies retroactively to telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984.

(2) This chapter applies to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any contract; but this chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. Nothing in this chapter or in rules adopted thereunder prevents any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to construction contracts.

(4) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

History: En. Sec. 44, Ch. 519, L. 1983; amd. Sec. 1, Ch. 548, L. 1989.

18-4-133. Purchases exempt from general requirements. (1) Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account shall be kept of these purchases and the account shall be furnished to the department.

(2) Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(3) The department of administration may exempt the department of corrections and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and human services for residents of its institutions and community-based programs.

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

History: En. Sec. 9, Ch. 66, L. 1923; re-en. Sec. 293.9, R.C.M. 1935; amd. Sec. 8, Ch. 80, L. 1961; amd. Sec. 74, Ch. 326, L. 1974; amd. Sec. 1, Ch. 230, L. 1977; R.C.M. 1947, 82-1919; amd. Sec. 1, Ch. 418, L. 1979; amd. Sec. 1, Ch. 74, L. 1981; amd. Sec. 47, Ch. 519, L. 1983; MCA 1981, 18-4-104; redes. 18-4-133 by Code Commissioner, 1983; amd. Sec. 1, Ch. 262, L. 1991.

Cross-References

Course of dealing and usage of trade, 30-1-205.

Powers and duties of Department of Corrections and Human Services, 53-1-203.

18-4-134 through 18-4-140 reserved.

18-4-141. Contract transfers and collusion prohibited — violations and penalty. (1) No contract or order or any interest therein may be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract. No approval of a transfer, assignment, or subcontract may release the original obligor or his sureties from their obligations to the state under the contract or order.

(2) Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state in the awarding of contracts is prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined not less than $500 or more than $5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section or both void ab initio.

History: En. Sec. 12, Ch. 66, L. 1923; re-en. Sec. 293.12, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1973; amd. Sec. 77, Ch. 326, L. 1974; amd. Sec. 5, Ch. 97, L. 1977; R.C.M. 1947, 82-1922; amd. Sec. 1, Ch. 52, L. 1983; MCA 1981, 18-4-105; redes. 18-4-141 by Code Commissioner, 1983.

Cross-References

Public employees not to have interest in contracts, 2-2-201.

Breach of contract, 27-1-311.

Assignment of nonnegotiable written contract, 28-2-206.

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

Illegal objects and provisions of contracts, Title 28, ch. 2, part 7.

U.C.C. — sales — delegation of performance, assignment of rights, 30-2-210.

Unfair trade practices, Title 30, ch. 14, part 2.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Gifts to public servants having discretionary function in contract letting, 45-7-104.

Illegal interests in contracts, 45-7-401.

Part 2
Duties of Department

18-4-201 through 18-4-214. Repealed. Sec. 53, Ch. 519, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

18-4-201. (1)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; Sec. 82-1917, R.C.M. 1947; (2)En. Sec. 4, Ch. 197, L. 1921; re-en. Sec. 287, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1925; re-en. Sec. 287, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1939; amd. Sec. 3, Ch. 80, L. 1961; amd. Sec. 60, Ch. 326, L. 1974; Sec. 82-1904, R.C.M. 1947; R.C.M. 1947, 82-1904, 82-1917(1); amd. Sec. 3, Ch. 597, L. 1979.

18-4-202. En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; R.C.M. 1947, 82-1917(part); amd. Sec. 4, Ch. 597, L. 1979.

18-4-203. En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; R.C.M. 1947, 82-1917(3); amd. Sec. 5, Ch. 597, L. 1979.

18-4-204 through 28-4-210 reserved.

18-4-211. (1)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; Sec. 82-1917, R.C.M. 1947; (2)En. Sec. 8, Ch. 197, L. 1921; re-en. Sec. 291, R.C.M. 1921; re-en. Sec. 291, R.C.M. 1935; amd. Sec. 63, Ch. 326, L. 1974; Sec. 82-1908, R.C.M. 1947; R.C.M. 1947, 82-1908, 82-1917(part).

18-4-212. En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977; R.C.M. 1947, 82-1917(part); amd. Sec. 3, Ch. 58, L. 1979.

18-4-213. (1)En. Sec. 7, Ch. 66, L. 1923; re-en. Sec. 293.7, R.C.M. 1935; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97,

L. 1977; Sec. 82-1917, R.C.M. 1947; (2) thru (4)En. Sec. 11, Ch. 66, L. 1923; re-en. Sec. 293.11, R.C.M. 1935; amd. Sec. 76, Ch. 326, L. 1974; Sec. 82-1921, R.C.M. 1947; R.C.M. 1947, 82-1917(5), 82-1921(part); amd. Sec. 6, Ch. 597, L. 1979.

18-4-214. En. Sec. 5, Ch. 197, L. 1921; re-en. Sec. 288, R.C.M. 1921; re-en. Sec. 288, R.C.M. 1935; amd. Sec. 4, Ch. 80, L. 1961; amd. Sec. 61, Ch. 326, L. 1974; R.C.M. 1947, 82-1905; amd. Sec. 7, Ch. 597, L. 1979.

18-4-215 through 18-4-220 reserved.

18-4-221. General procurement authority and duties of department — rules. (1) Except as otherwise provided in this chapter, the department shall adopt rules, consistent with this chapter, governing the procurement and disposal of any and all supplies and services to be procured by the state. The department shall consider and decide matters of policy within the provisions of this chapter. The department may audit and monitor the implementation of its rules and the requirements of this chapter.

(2) Except as otherwise specifically provided by law, the department shall, in accordance with its rules:

(a) procure or supervise the procurement of all supplies and services needed by the state; and

(b) sell, trade, or otherwise dispose of surplus supplies belonging to the state.

(3) Nothing contained herein shall preclude the state from doing its own printing on its own printing facilities.

History: En. Sec. 6, Ch. 519, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Vehicles — requisitions for purchases, 2-17-403.

Sale of state property, Title 18, ch. 6, part 1.

18-4-222. Delegation of authority by department. Subject to the rules of the department, the director may delegate procurement authority to designees or to any state department, agency, or official.

History: En. Sec. 7, Ch. 519, L. 1983.

18-4-223. State procurement rules — delegation — existing rights. (1) Rules shall be adopted by the department in accordance with the applicable provisions of Title 2, chapter 4.

(2) The department may not delegate its power to adopt rules.

(3) No rule may change a commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.

History: En. Sec. 8, Ch. 519, L. 1983.

Cross-References

Rules — requisites for validity, 2-4-305.

18-4-224. Contract clauses — rules. (1) The department may adopt rules permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

(i) changes in the work within the scope of the contract; and

(ii) temporary work stoppage or delay of performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the contracting parties may mutually agree; or

(e) in the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules adopted under 18-4-225.

(3) The department may adopt rules permitting or requiring the inclusion in state contracts of clauses providing for appropriate remedies and relating to the following subjects:

(a) liquidated damages, as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract, in whole or in part, for the convenience of the state.

(4) The director or the head of a purchasing agency may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying such variation. Notice of any material variation must be stated in the invitation for bids or request for proposals.

History: En. Sec. 32, Ch. 519, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

18-4-225. Cost principles — rules. The department shall adopt rules setting forth cost principles which must be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. However, if a written determination is approved at a level above the procurement officer, such cost principles may be modified by contract.

History: En. Sec. 33, Ch. 519, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Cost-plus-percentage contracts prohibited, 18-4-310.

18-4-226. Surplus supply — rules. (1) As used in this section, the following definitions apply:

(a) "Supplies" means supplies owned by the state.

(b) "Surplus supplies" means any supplies having a remaining useful life but that are no longer required by the using agency in possession of them. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

(2) The department shall adopt rules governing:

(a) the management of supplies during their entire life cycle;

(b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by rule;

(c) transfer of surplus supplies.

(3) No employee of the owning or disposing agency directly involved with the disposal may purchase supplies sold by his agency.

(4) Proceeds from the sale, lease, or disposal of surplus supplies must be allocated as provided by 18-6-101, less a reasonable handling fee.

History: En. Secs. 34 thru 36, Ch. 519, L. 1983; amd. Sec. 3, Ch. 234, L. 1991.

Cross-References

Equipment and supplies, Title 2, ch. 17, part 2.

18-4-227 through 18-4-230 reserved.

18-4-231. Definition of specification. As used in 18-4-231 through 18-4-234, "specification" means any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

History: En. Sec. 28, Ch. 519, L. 1983.

18-4-232. Specifications — rules. (1) The department shall adopt rules governing the preparation, maintenance, and content of specifications for supplies and services required by the state.

(2) The department shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies and services required by the state.

History: En. Sec. 29, Ch. 519, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

18-4-233. Using agencies' advice. The director may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

History: En. Sec. 30, Ch. 519, L. 1983.

18-4-234. Competition. All specifications shall promote overall economy for the purposes intended and encourage competition in satisfying the state's needs and may not be unduly restrictive.

History: En. Sec. 31, Ch. 519, L. 1983.

18-4-235 through 18-4-240 reserved.

18-4-241. Authority to remove or suspend from vendors' list. (1) The department may remove a person for cause from consideration for award of contracts. The removal may not be for a period of more than 3 years.

(2) The department may suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in activities that may lead to removal. The suspension may not be for a period exceeding 3 months unless an indictment has been issued for an offense that would be a cause for removal under subsection (3), in which case the suspen-

sion must, at the request of the attorney general, remain in effect until after the trial of the suspended person. The authority to remove or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

(a) violation of contract provisions, as set forth in (i) and (ii) of this subsection, of a character which is regarded by the department to be so serious as to justify removal action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal;

(b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules, and after adequate written notice to the affected person of the intent to remove or suspend;

(c) any other cause the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity for any cause listed in the department's rules; and

(d) failure to comply with the provisions of Title 39, chapter 51, or Title 39, chapter 71.

(4) The department shall issue a written decision to remove or suspend, stating the reasons for the action taken. A copy of the decision must be mailed or otherwise furnished immediately to the person involved.

History: En. Sec. 9, Ch. 519, L. 1983; amd. Sec. 26, Ch. 234, L. 1987.

Cross-References

Breach of contract, 27-1-311.

18-4-242. Remedies prior to and after award. (1) If a solicitation or award of a contract is in violation of law, the department may apply the remedies provided in subsections (2) and (3).

(2) If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award must be:

(a) canceled; or

(b) revised to comply with the law.

(3) (a) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:

(i) ratified and affirmed, provided it is determined that doing so is in the best interests of the state; or

(ii) terminated, and the person awarded the contract must be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

(b) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has acted fraudulently or in bad faith, the contract may be:

(i) declared void; or

(ii) ratified and affirmed if such action is in the best interests of the state, without prejudice to the state's rights to appropriate damages.

(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided in subsections (2) and (3).

History: En. Sec. 10, Ch. 519, L. 1983.

Cross-References

Conditional obligations, Title 28, ch. 1, part 4.

Alternative obligations, Title 28, ch. 1, part 5.

Novation, Title 28, ch. 1, part 15.

When proposal may be revoked, 28-2-511.

How proposal revoked, 28-2-512.

Modification of contracts, Title 28, ch. 2, part 16.

When party may rescind, 28-2-1711.

Part 3

Procurement Procedure

Part Cross-References

Department of Fish, Wildlife, and Parks — waterfowl stamp artwork — exemption, 87-2-412.

18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(2) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee. The term does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(4) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(5) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(7) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(9) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(10) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time.

History: En. Sec. 12, Ch. 519, L. 1983; amd. Sec. 1, Ch. 303, L. 1987; amd. Sec. 1, Ch. 761, L. 1991.

18-4-302. Methods of source selection. (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by competitive sealed bidding, pursuant to 18-4-303, except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of this title, and subsections (2) and (3). Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) At the time the department or a purchasing agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or purchasing agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program through bulk purchase or procured under a term contract may be purchased by a purchasing agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised or established catalog price is less than the price offered by the central stores program or under the term contract and conforms in all material respects to the terms, conditions, and quality offered by the central stores program or under the term contract. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

History: En. Sec. 13, Ch. 519, L. 1983; amd. Sec. 2, Ch. 303, L. 1987; amd. Sec. 1, Ch. 329, L. 1989.

18-4-303. Competitive sealed bidding. (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time prior to bid opening.

(3) Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids. The amount of each bid and such other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection. After the time of award, all bids and bid documents must be open

to public inspection in accordance with the provisions of 2-6-102 and are subject to the requirements of subsection (4).

(4) Bids must be available for public inspection when the bids are opened if:

(a) the invitation for bids is issued by a state agency to contract with the private sector to provide services currently conducted by state employees; and

(b) acceptance of bids would result in the displacement of five or more state employees.

(5) Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(6) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(7) The contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the low responsive and responsible bid does not exceed such funds by more than 5%, the director or the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(8) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

History: En. Sec. 14, Ch. 519, L. 1983; amd. Sec. 2, Ch. 761, L. 1991.

Cross-References

Public officers, employees, and former employees not to have interest in contracts, 2-2-201.

18-4-304. Competitive sealed proposals. (1) When, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. The department may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of supplies and services by competitive sealed bidding.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

(4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection after contract award.

(5) The request for proposals must state the relative importance of price and other evaluation factors.

(6) As provided in the request for proposals and under rules adopted by the department, discussions may be conducted with responsible offerors who submit apparently responsive proposals for the purpose of clarification, to assure full understanding of and responsiveness to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted, after submissions and prior to award, for the purpose of obtaining best and final offers. In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing offerors. The department may require the submission of cost or pricing data in connection with an award under this section.

(7) The award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, including the preference in 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file shall contain the basis on which the award is made.

History: En. Sec. 15, Ch. 519, L. 1983.

18-4-305. Small purchases. Any procurement not exceeding the amount established by rule may be made in accordance with small purchase procedures established by the department. Procurement requirements may not be artificially divided so as to constitute a small purchase under this section.

History: En. Sec. 16, Ch. 519, L. 1983.

Cross-References

Small business preferences, Title 18, ch. 5, part 3.

18-4-306. Sole source procurement — records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that there is only one source for the required supply or service item. The department may require the submission of cost or pricing data in connection with an award under this section.

(2) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

(3) The record must be available for public inspection.

History: En. Secs. 17, 27, Ch. 519, L. 1983.

Cross-References

Public records management, Title 2, ch. 6, part 2.

18-4-307. Cancellation of invitations for bids or requests for proposals. An invitation for bids, a request for proposals, or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state. The reasons therefor must be made part of the contract file.

History: En. Sec. 18, Ch. 519, L. 1983.

18-4-308. Nonresponsibility of bidders and offerors — nondisclosure. (1) A written determination of nonresponsibility of a bidder or offeror must be made in accordance with rules adopted by the department. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(2) Information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the department or the purchasing agency without prior written consent by the bidder or offeror.

History: En. Sec. 19, Ch. 519, L. 1983.

18-4-309. Prequalification of suppliers. Prospective suppliers may be prequalified for particular types of supplies and services. Solicitation mailing lists of potential contractors must include but not be limited to such prequalified suppliers.

History: En. Sec. 20, Ch. 519, L. 1983.

18-4-310. Types of contracts. Subject to the limitations of this section, any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies or services required except under such a contract.

History: En. Sec. 21, Ch. 519, L. 1983.

18-4-311. Approval of accounting system. Except with respect to firm fixed-price contracts, no contract type may be used unless it has been determined in writing by the department that:

(1) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

History: En. Sec. 22, Ch. 519, L. 1983.

18-4-312. Bid and contract performance security. (1) For state contracts for the procurement of services in the amount of $10,000 or less or of supplies, the department may in its discretion require the filing of:

(a) bid security;

(b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors; or

(c) both bid and contract performance security.

(2) For state contracts for the procurement of services exceeding $10,000, the department shall require bid security and contract performance security, except for purchases described in 18-4-305 and 18-4-306.

(3) If security is required under subsection (1) or (2), the following types of security may be required to be deposited with the state:

(a) a good and sufficient bond with a licensed surety company as surety;

(b) an irrevocable letter of credit not to exceed $100,000 in accordance with the provisions of Title 30, chapter 5, part 1;

(c) lawful money of the United States;

(d) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of Montana or by a banking association located in Montana; or

(e) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

(4) The amount and type of the security mentioned above must be determined by the department to be sufficient to cover the risk involved to the state, except that the same shall not be less than 10% of the bid price for bid security and 25% of the total contract price for contract performance security, and must be payable to the state of Montana. In determining the amount and type of contract performance security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails to enter into a formal contract; such considerations shall include but are not limited to the type of supply or service being procured, dollar amount of the proposed contract, or delivery time requirements. The department may adopt rules to assist it in making these determinations and in protecting the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be included in the invitations for bids or requests for proposals.

(5) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract or provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, the department may, in its discretion, require the bidder to forfeit his bid security to the state and become immediately liable on the bid bond, but not in excess of the sum stated therein. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the bid bond shall not exceed the amount specified in the invitation for bid or request for proposal.

(6) Negotiable instruments provided as bid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

(7) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not apply to procurements under this chapter.

History: En. Sec. 23, Ch. 519, L. 1983; amd. Sec. 2, Ch. 424, L. 1985.

Cross-References

Procurement of services, Title 18, ch. 8, part 1.

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

18-4-313. Contracts — terms, extensions, and time limits. (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a longer period than 3 years; however, the department may contract for the lease or purchase of telecommunications equipment and systems, data processing equipment, the department of revenue liquor agencies, and the department of social and rehabilitation services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

History: En. Sec. 24, Ch. 519, L. 1983; amd. Sec. 1, Ch. 121, L. 1985; amd. Sec. 3, Ch. 228, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 228 in (1), in second clause of first sentence, inserted "the department of revenue liquor agencies"; and made minor changes in style. Amendment effective March 30, 1993.

Applicability: Section 6, Ch. 228, L. 1993, provided: "[This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act]." Effective March 30, 1993.

Cross-References

Communications systems, Title 2, ch. 17, part 3.

Retroactive application, 18-4-132.

Contracts — what is unlawful, 28-2-701.

Time of performance, Title 28, ch. 3, part 6.

Medical assistance — Medicaid, Title 53, ch. 6, part 1.

18-4-314. Reporting of anticompetitive practices. If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general by the department.

History: En. Sec. 25, Ch. 519, L. 1983.

Cross-References

Unfair trade practices, Title 30, ch. 14, part 2.

Part 4
Cooperative Purchasing

18-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States.

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

History: En. Sec. 37, Ch. 519, L. 1983.

18-4-402. Cooperative purchasing authorized. The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

History: En. Sec. 38, Ch. 519, L. 1983.

18-4-403. Sale, acquisition, or use of supplies by a public procurement unit. The department may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of part 3.

History: En. Sec. 39, Ch. 519, L. 1983.

18-4-404. Cooperative use of supplies or services. The department may enter into an agreement, independent of the requirements of part 3, with any other public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

History: En. Sec. 40, Ch. 519, L. 1983.

Cross-References

Procurement of services, Title 18, ch. 8.

18-4-405. Joint use of facilities. The department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

History: En. Sec. 41, Ch. 519, L. 1983.

18-4-406. Information and services — fees. (1) Upon request, the department may make available to public procurement units certain services, including but not limited to the following:

(a) standard forms;

(b) printed manuals;

(c) product specifications and standards;

(d) quality assurance testing services and methods;

(e) qualified products lists;

(f) source information;

(g) common use commodities listings;

(h) supplier prequalification information;

(i) supplier performance ratings;

(j) debarred and suspended bidders lists;

(k) forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms;

(l) contracts or published summaries thereof, including price and time of delivery information; and

(m) cooperative purchasing.

(2) The state, through the department, may provide technical services, including but not limited to the following:

(a) development of product specifications;

(b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;

(c) use of product testing and inspection facilities; and

(d) use of personnel training programs.

(3) The department may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (1) and (2). Such fees may be used by the department to offset costs incurred in providing such services.

History: En. Sec. 42, Ch. 519, L. 1983.

18-4-407. Review of procurement requirements. To the extent possible, the department may collect information concerning the type, cost, quality, and quantity of commonly used supplies or services being procured or used by state public procurement units. The department may make available all such information to any public procurement unit upon request.

History: En. Sec. 43, Ch. 519, L. 1983.

CHAPTER 5

SPECIAL PURCHASING CONDITIONS

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Part 1
Sheltered Workshops

Part Cross-References

Sheltered workshops, Title 53, ch. 7, part 2.

18-5-101. Definitions. As used in 18-5-101 through 18-5-103, the following definitions apply:

(1) "Certified sheltered workshop" or "work activity center" means a nonprofit corporation incorporated under the laws of the state for the purpose of providing vocational services to disabled vocationally handicapped individuals, in whole or in part, which:

(a) holds a current certificate issued by the United States department of labor for either one or all of the following:

(i) evaluation or training;

(ii) a regular work program; or

(iii) work activity center;

(b) complies with other applicable occupational, health, and safety standards of local, state, and federal governments governing the operation of such facility not otherwise included in 18-5-101 through 18-5-103;

(c) in the manufacture of products and in the provision of service, whether or not the product or service is procured under 18-5-101 through 18-5-103, employs and trains vocationally handicapped individuals for not less than 75% of the man-hours of direct labor required for the manufacture of products or the provision of service; and

(d) is hereinafter referred to as a "facility".

(2) "Department" means the department of administration.

(3) "Vocationally handicapped" means an individual under a physical, mental, or emotional disability which constitutes a substantial handicap to employment and prevents the individual under the disability from engaging in normal competitive employment.

History: En. 82-1941 by Sec. 1, Ch. 547, L. 1977; R.C.M. 1947, 82-1941.

Cross-References

Nonprofit corporations, Title 35, ch. 2.

Vocational rehabilitation, Title 53, ch. 7.

Sheltered employment defined, 53-7-202.

Developmentally disabled, Title 53, ch. 20.

18-5-102. Duties and powers of department of administration. (1) The department shall maintain a current list of facilities located in this state, including a list of products and services provided by each facility, based on information provided by the facilities. A facility requesting to be included on the list shall indicate the products and services available from it and shall provide the department with updated information, as necessary.

(2) The department may contract with a nonprofit organization to:

(a) certify facilities;

(b) provide technical assistance to facilities on matters of product or service capabilities;

(c) facilitate distribution of orders among facilities and to insure equal opportunity in obtaining orders.

(3) The department shall adopt, revise, and amend rules to implement 18-5-101 through 18-5-103 in accordance with the procedures of the Montana Administrative Procedure Act.

History: En. 82-1942 by Sec. 2, Ch. 547, L. 1977; R.C.M. 1947, 82-1942; amd. Sec. 1, Ch. 270, L. 1985.

Cross-References

Proof of market price — time and place, 30-2-723.

Sheltered workshops — legislative findings and purpose, 53-7-201.

Purchase of sheltered employment services, 53-7-203.

18-5-103. Procurement requirements. State departments, institutions, and agencies may procure listed products and services from a facility. The provisions of this title relating to competitive bidding do not apply to purchases made in accordance with 18-5-101 through 18-5-103.

History: En. 82-1943 by Sec. 3, Ch. 547, L. 1977; R.C.M. 1947, 82-1943; amd. Sec. 2, Ch. 270, L. 1985.

Cross-References

Purchase of sheltered employment services, 53-7-203.

18-5-104. Repealed. Sec. 7, Ch. 58, L. 1979.

History: En. 82-1938, 82-1939, 82-1940 by Secs. 1, 2, 3, Ch. 123, L. 1974; R.C.M. 1947, 82-1938, 82-1939, 82-1940.

Part 2
Surplus Property Procurement

18-5-201. Administration of the state agency for federal surplus property. There is a Montana state agency for federal surplus property that is administered by a department designated by the governor. The director of the department may prescribe the duties of personnel needed to carry out the duties under this part.

History: En. Sec. 1, Ch. 136, L. 1953; amd. Sec. 1, Ch. 478, L. 1977; R.C.M. 1947, 82-3101; amd. Sec. 2, Ch. 485, L. 1989.

Cross-References

State agency for surplus property, 2-15-1011.

Acceptance of federal facilities and installations, 77-1-212.

18-5-202. Authority and duties of the state agency for surplus property. (1) The state agency for surplus property is hereby authorized and empowered to:

(a) acquire from the United States of America under and in conformance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the "act", such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes authorized by the act;

(b) warehouse such property; and

(c) distribute such property within the state to eligible participants.

(2) The state agency for surplus property is hereby authorized to receive applications from eligible participants for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate authorities of the state, make recommendations regarding the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act as amended.

(3) For the purpose of executing its authority under this part, the state agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and prescribe such requirements as may be deemed necessary and take such other action as is deemed necessary and suitable in the administration of this part to assure maximum utilization by and benefit to participants within the state from property distributed under this part.

(4) The state agency for surplus property is authorized and empowered to make such certifications, take such action, make such expenditures, and enter into such contracts, agreements, and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel, and services of each by the other), require such reports and make such investigation as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America.

(5) The state agency for surplus property is authorized and empowered to act as clearinghouse of information for eligible participants to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from eligible participants and to transmit to them all available information in reference to such property, and to aid and assist eligible participants in every way possible in the consummation of acquisitions or transactions hereunder.

(6) The state agency for surplus property, in the administration of this part, shall cooperate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act; make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require; and comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use, or accounting for property donable or donated to the state.

History: En. Sec. 2, Ch. 136, L. 1953; amd. Sec. 1, Ch. 166, L. 1957; amd. Sec. 2, Ch. 478, L. 1977; R.C.M. 1947, 82-3102.

Cross-References

Public land trust, disposition, Art. X, sec. 11, Mont. Const.

Fish and wildlife — state-federal relationships, Title 87, ch. 1, part 7.

18-5-203. Agency for surplus property — authorization for financing. The state agency for surplus property shall be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property which shall be deposited in the treasury in an internal service fund.

History: En. Sec. 4, Ch. 136, L. 1953; amd. Sec. 66, Ch. 147, L. 1963; amd. Sec. 1, Ch. 389, L. 1977; amd. Sec. 3, Ch. 478, L. 1977; R.C.M. 1947, 82-3104; amd. Sec. 3, Ch. 277, L. 1983.

Cross-References

Fund structure, 17-2-102.

18-5-204. Department director — delegating powers. The director of the department may delegate to any employees of the state agency for surplus property such power and authority as he deems reasonable and proper for the effective administration of this part.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 2, Ch. 166, L. 1957; amd. Sec. 49, Ch. 177, L. 1965; amd. Sec. 4, Ch. 478, L. 1977; R.C.M. 1947, 82-3105.

Cross-References

Bonds of state officers and employees, Title 2, ch. 9, part 6.

18-5-205. Officers or employees authorized to secure transfer of federal surplus property. (1) Notwithstanding any provision of law to the contrary, the governing board or, if there is none, the executive head of a state department or agency or of a city, county, school district, or other political subdivision may by order or resolution confer upon an officer or employee continuing authority to:

(a) secure the transfer to it of surplus property under this part through the department designated in 18-5-201 under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended; and

(b) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of the transfers.

(2) The authority conferred upon an officer or employee by an order or resolution remains in effect until the order or resolution is revoked and written notice of the revocation has been received by the department.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 3, Ch. 166, L. 1957; amd. Sec. 5, Ch. 478, L. 1977; R.C.M. 1947, 82-3106; amd. Sec. 3, Ch. 485, L. 1989.

Part 3

Small Business Preferences

Part Cross-References

Public contracts — preferences, Title 18, ch. 1, part 1.

18-5-301. Short title. This part shall be known and may be cited as the "Montana Small Business Purchasing Act".

History: En. 82-1929 by Sec. 1, Ch. 204, L. 1974; R.C.M. 1947, 82-1929.

18-5-302. Statement of purpose and policy. It is the purpose of this part and is hereby declared to be the policy of this state that, whereas the existence of a strong and healthy free enterprise system is directly related to the well-being and competitive strength of small business concerns and to the opportunity for small businesses to have free entry into business, to grow, and to expand, the state shall insure that a fair proportion of its total purchases and contracts for property and services be placed with small business concerns.

History: En. 82-1930 by Sec. 2, Ch. 204, L. 1974; R.C.M. 1947, 82-1930.

Cross-References

Printing Supreme Court decisions, 3-2-603.

Unfair competition in purchasing, 30-14-208.

18-5-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means any department, division, or agency of the state of Montana.

(2) "Small business" means a business which is independently owned and operated and which is not dominant in its field of operation. The department of administration shall establish a detailed definition by rule using, in addition to the foregoing criteria, other criteria. Small business shall further mean all business domiciled in the state of Montana or one that employs more than 50% of its total employed personnel within the boundaries of the state of Montana.

(3) "Small business set-aside" means a purchase request for which bids are to be invited and accepted only from small businesses by a department.

History: En. 82-1931 by Sec. 3, Ch. 204, L. 1974; R.C.M. 1947, 82-1931.

Cross-References

Business corporations, Title 35, ch. 1.

18-5-304. Designation of small business set-asides. (1) Each department has authority to designate as small business set-asides specified commodities, equipment, or services, except those services rendered and furnished by registered professions, such as but not limited to accountants, attorneys, architects, dentists, engineers, land surveyors, optometrists, physicians, and pharmacists, for which purchase has been requested under the Montana Small Business Purchasing Act. Such a designation shall be made prior to the advertisement for bids in a daily state newspaper, and when the advertisement is published, it shall indicate the purchases which have been designated small business set-asides. To effectuate the purposes of this part, a department shall exercise this authority whenever there is a reasonable expectation that bids will be obtained from at least three small businesses capable of furnishing the desired property or service at a fair and reasonable price.

(2) In the case of purchase designated as small business set-asides, invitations to bid shall be confined to small businesses, and bids from other businesses shall be rejected. The purchase, contract, or expenditure of funds shall be awarded to the lowest responsible bidder among the small businesses (considering conformity with specifications and terms) in accordance with the rules for purchasing published by the department.

History: En. 82-1932 by Sec. 4, Ch. 204, L. 1974; amd. Sec. 7, Ch. 97, L. 1977; R.C.M. 1947, 82-1932.

Cross-References

Purchases exempt from general requirements, 18-4-133.

Professions and Occupations, Title 37.

18-5-305. Insufficient bids — withdrawal — reissue. (1) If the total number of small businesses responding to the invitation to bid and considered capable of meeting the specifications and terms of the invitation to bid is less than three or if a department determines that acceptance of the best bid will result in the payment of an unreasonable price, the department shall reject all bids and withdraw the designation of small business set-aside.

(2) If a department withdraws the designation of small business set-aside, it shall notify the bidders of the reason why the bids were rejected. Invitations to bid containing the same or rewritten specifications and terms shall then be reissued under the Montana Small Business Purchasing Act, without the designation of small business set-aside.

History: En. 82-1933 by Sec. 5, Ch. 204, L. 1974; R.C.M. 1947, 82-1933.

18-5-306. Successful bidder — notice and purchase order. (1) After the successful bidder has been determined, the department shall place an advertisement in a daily newspaper indicating that all bids submitted on a small business set-aside have been opened and reporting the name and address of the successful bidder.

(2) A department shall send a purchase order to the successful bidder no later than 14 days after the appearance of the advertisement announcing the successful bidder.

History: En. 82-1934 by Sec. 6, Ch. 204, L. 1974; R.C.M. 1947, 82-1934.

18-5-307. Preference to Montana small business. When the best bid is made by a domestic Montana small business and it is the same as another bid, preference shall be given to such Montana concern.

History: En. 82-1935 by Sec. 7, Ch. 204, L. 1974; R.C.M. 1947, 82-1935.

Cross-References

State contracts to lowest resident bidder, 18-1-102.

Impartiality to be shown in letting contracts — preference to residents, 18-1-111.

Montana product preference provisions, 18-1-112.

18-5-308. Construction with other sections. Procurement from small businesses under this part is subject to all other statutes governing state procurement and all rules promulgated thereunder, as now or hereafter amended, except that in case of conflict this part governs and the provisions set forth in 18-1-102, 18-1-111, and 18-1-112 shall not apply.

History: En. 82-1936 by Sec. 8, Ch. 204, L. 1974; R.C.M. 1947, 82-1936.

Cross-References

Procurement generally, Title 18, ch. 4.

Part 4

Vending Facilities

Part Cross-References

Blind person preference, Title 18, ch. 5, part 5.

18-5-401. Purpose. It is the purpose of this part, in recognition of the vocational and economic needs of blind persons, to make available to those blind persons in need of vocational opportunities space in state, federal, or other property appropriate for certain business operations and to assist those persons in the development of business operations.

History: En. Sec. 1, Ch. 175, L. 1981.

18-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) "Blind vendor" means a person certified as a blind person for the purpose of this part and who is operating a vending facility administered by the department.

(3) "Certified blind person" means a blind person whom the department has determined to be a blind person as defined in this part who is in need of vocational opportunities, and who is qualified to operate a vending facility.

(4) "Department" means the department of social and rehabilitation services.

(5) "Federal property" means buildings or portions of buildings or other real property owned or leased by the federal government excluding military reservations upon which the department may administer vending facilities

by an agreement entered into under the authority of the federal Randolph-Sheppard Act, as amended.

(6) "Other property" means all real property other than state or federal property as defined in this part.

(7) "State property" means those buildings or portions of buildings or other real property owned or leased under a lease-purchase agreement, or in the case of a building, leased in its entirety by the state or agencies of the state that are utilized in the conduct of state matters and occupied principally by state employees. State property for the purpose of this part does not include vocational institutions or institutions of higher education.

(8) "Vending facility" means an area and equipment inclusive of vending machines on state property which is or may be utilized in providing a food, beverage, or other service to employees and other persons present on the property.

(9) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include postage stamp machines or coin-operated telephones.

(10) "Vocational rehabilitation programs" means those programs provided for under the federal Randolph-Sheppard Act, as amended, and Title 53, chapter 7, part 3.

History: En. Sec. 2, Ch. 175, L. 1981.

18-5-403. Certification and eligibility of blind persons. (1) The department shall certify for the purposes of this part and the federal Randolph-Sheppard Act, as amended, those persons who are blind persons as defined in this part who the department has determined are in need of vocational opportunities and are qualified to operate vending facilities.

(2) Any person or vendor operating a vending facility under the auspices of the blind vendor program administered by the department prior to October 1, 1981, may be certified as a blind vendor for the purposes of this part.

(3) Only certified blind persons are eligible for the vocational opportunities provided in this part.

History: En. Sec. 3, Ch. 175, L. 1981.

18-5-404. Vending facilities, equipment, and supplies — available to certified blind persons. (1) The department may make available to a certified blind person a vending facility appropriate for providing that person with a business opportunity determined by the department to be suitable for that person.

(2) The department may, through the vocational rehabilitation programs it administers, provide by sale, lease, loan, or grant such equipment, stocks, and supplies as may be necessary for a blind vendor to establish or improve a vending facility business. The department shall retain a first option to repurchase any equipment it has sold to a blind vendor.

History: En. Sec. 4, Ch. 175, L. 1981.

18-5-405. Right to fair hearing. A blind vendor is entitled to a fair hearing for any grievance against the department.

History: En. Sec. 8, Ch. 175, L. 1981.

18-5-406. Health and retirement fund — services to vendors. (1) The department may manage a health and retirement fund for blind vendors.

(2) The department may set aside a reasonable percentage of the net incomes earned by blind vendors from the operation of vending facilities on state and other property administered by the department to fund the operation of vending facilities and to fund the blind vendors' health and retirement fund.

(3) The department may use all net income earned from facilities operated under the provisions of 18-5-415(2) and 18-5-416 to fund services to blind vendors and to fund the blind vendors' health and retirement fund.

History: En. Sec. 6, Ch. 175, L. 1981.

18-5-407 through 18-5-410 reserved.

18-5-411. Administration of vending facilities — state properties. (1) The department of administration or any other department of state government that administers state property subject to this part shall transfer to the department the management and control of any vending facility that the department has determined is an appropriate facility for the purposes of this part and that the department has determined is needed for the purposes of this part.

(2) A lease or contract for the operation of a vending facility entered into prior to October 1, 1981, is not subject to this part while the lease or contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on October 1, 1981, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both. In any case where the department determines that a private vendor operating a vending facility on state property on October 1, 1981, who but for this part could reasonably be expected to renew his contract for the vending facility, would be subjected to economic hardship should the contract be allowed to expire at the end of its term, the department may agree to a one-time renewal of that vendor's contract for the vending facility for a period not to exceed 4 years.

(3) The department of administration or any other department of state government that administers state property subject to this part shall give reasonable notice to the department of the expiration or termination of any lease or contract in effect for a vending facility.

(4) Upon receipt of the notice, the department shall give reasonable notice to the department of administration or other department of state government that sent the notice required in subsection (3) stating that the department has determined that the vending facility is either appropriate and needed for the purposes of this part or that it is not.

(5) A state agency administering state property shall consult with the department when planning for a new state building, planning for remodeling of or addition to an existing state building, or negotiating the lease of a building for state use, to determine what vending facilities might be appropriate for the site and plan for such vending facilities.

(6) The department shall administer those vending facilities which are determined to be appropriate and necessary.

History: En. Sec. 5, Ch. 175, L. 1981.

18-5-412. Administration of vending facilities on other property. The department may enter into agreements with private parties or governmental entities not otherwise coming under the provisions of this part owning or controlling other property for the establishment and administration of blind vendor operations.

History: En. Sec. 9, Ch. 175, L. 1981.

18-5-413. Implementation of Randolph-Sheppard Act, as amended. (1) The department may enter into agreements with the federal government as provided for in the Randolph-Sheppard Act, as amended, for administering the Randolph-Sheppard Act for all state or federal purposes.

(2) The department may adopt rules to implement agreements with the federal government entered into under the Randolph-Sheppard Act, as amended.

History: En. Sec. 10, Ch. 175, L. 1981.

18-5-414. Authority to adopt rules. The department may adopt such rules as are necessary to effectuate this part.

History: En. Sec. 11, Ch. 175, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

18-5-415. Operation of facilities. (1) The department is not subject to any requirements for competitive bidding on state leases or services to the state on vending facilities that are to be made available to certified blind persons or when purchasing initial supplies for the purpose of assisting a blind vendor.

(2) The department may temporarily operate a vending facility administered by the department if there is no certified blind person qualified to operate that facility.

(3) Neither a blind vendor nor the department is required to pay for rent, utilities, janitorial services in accessible public areas, or building maintenance costs for the space occupied by a vending facility on state property. The department may charge a use fee in lieu of rental, on a basis to be determined by the department, in the case of any blind vendor operating a vending facility on state property whose net income for at least 10 of the preceding 12 months has exceeded twice the poverty level income for a nonfarm family of four as determined by the federal government.

(4) The department may purchase, sell, lease, maintain, and manage as necessary the equipment, stocks, and supplies required for the operation of those vending facilities administered as provided for in this part.

(5) The department shall, by rule, provide for appropriate allocation between the department and the blind vendors of liability for the operation of vending facilities operated pursuant to this part.

(6) After consultation with departments that are served by vending facilities subject to this part, the department may take action as necessary to assure the quality of services being provided by blind vendors.

History: En. Secs. 5, 7, Ch. 175, L. 1981.

18-5-416. Vending machines. The department may, except on state property, directly or through contractual arrangements, operate a facility consisting solely of vending machines if it has determined that operation by a blind vendor would be inappropriate. The department shall not directly operate vending machines on any state property where the department does not directly operate vending machines on October 1, 1981, unless, after competitive bid, the department is unable to obtain a suitable private contractor to operate vending machines on the state property. The department shall not, except through competitive bid, authorize a blind vendor to operate on state property a vending facility which consists solely or primarily of vending machines and which does not require the active presence of a vendor during its hours of operation.

History: En. Sec. 5, Ch. 175, L. 1981.

Part 5

Blind Person Preference

Part Compiler's Comments

Applicability: Section 3, Ch. 36, Sp. L. June 1986, provided: "A contract for the operation of a vending facility entered into prior to July 1, 1986, is not subject to this part while the contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on July 1, 1986, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both."

Part Cross-References

Vending facilities, Title 18, ch. 5, part 4.

18-5-501. Definitions. For purposes of this part, the following definitions apply:

(1) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) "Department" means the department of administration.

(3) "Purchasing agency" means any state agency authorized by Title 18, chapter 4, to enter into contracts.

(4) "Responsible bidder" means a person who has the capability in all respects to fully perform the requirements of a contract and has the integrity and reliability that assure good faith performance.

(5) (a) "State property" means a building or portion of a building or other real property that is:

(i) owned or leased by the state or an agency of the state;

(ii) utilized in the conduct of state matters; and

(iii) occupied principally by state employees.

(b) State property does not include vocational institutions or institutions of higher education.

(6) "Vending facility" means the area and equipment, including vending machines, on state property which are utilized in providing a food or beverage service to employees and other persons present on the property.

(7) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include a postage stamp machine, photocopy machine, or coin-operated telephone.

History: En. Sec. 1, Ch. 36, Sp. L. June 1986.

18-5-502. Preference to blind persons. (1) Whenever state property is proposed to be made available to private persons for use as a vending facility, if two or more substantially equal proposals submitted by responsible bidders are determined to most closely meet the purchasing agency's specifications and if one of the proposals has been submitted by a blind person, the contract must be awarded to the blind person.

(2) For purposes of this section, proposals are substantially equal if their overall ratings, as determined by the purchasing agency in accordance with the request for proposal, do not differ by more than 3%.

(3) Any contract awarded pursuant to this section to a blind person must prohibit transfer of the contract by sublease, assignment, or any other method.

History: En. Sec. 2, Ch. 36, Sp. L. June 1986.

18-5-503. Application of state procurement law. Procurement under this part is subject to all other statutes governing state procurement except that in case of conflict the provisions of this part apply.

History: En. Sec. 4, Ch. 36, Sp. L. June 1986.

Cross-References

Procurement generally, Title 18, ch. 4.

18-5-504. Blind preference rules. The department shall adopt rules to implement this part.

History: En. Sec. 5, Ch. 36, Sp. L. June 1986.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 6

SALES

Part 1 — Sale of State Property

18-6-101. Power to sell state property — proceeds credited to general fund.
18-6-102. Interagency transfers.
18-6-103. Highway equipment by bid.

Chapter Cross-References

Contract for sale, Title 30, ch. 11, part 1.

Seller's rights and obligations, Title 30, ch. 11, part 2.

Sale of state lands, Title 77, ch. 2, part 3.

Part 1

Sale of State Property

18-6-101. Power to sell state property — proceeds credited to general fund. (1) The department has exclusive power, subject to the approval of the governor, to sell or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service equipment, or other personal property of every kind owned by the state but not needed or used by any state institution or by any department of state government.

(2) Unless otherwise provided by law, the department shall credit the general fund with all money received.

(3) Whenever the personal property was accounted for in an enterprise or internal service fund or designated subfund account, the proceeds of the sale shall be credited to the appropriate enterprise or internal service fund or designated subfund account.

History: En. Sec. 4, Ch. 66, L. 1923; re-en. Sec. 293.4, R.C.M. 1935; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974; R.C.M. 1947, 82-1914(part); amd. Sec. 4, Ch. 58, L. 1979; amd. Sec. 1, Ch. 346, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 2, Ch. 234, L. 1991.

Cross-References

Rights to property, 2-15-132.

Inventory — property to be charged to receiving agency, 2-17-202.

Fund structure, 17-2-102.

18-6-102. Interagency transfers. If a state institution or agency needs and requests the materials, etc., to be disposed of, that institution or agency, upon the approval of the governor, may receive the materials, etc., requested.

History: En. Sec. 4, Ch. 66, L. 1923; re-en. Sec. 293.4, R.C.M. 1935; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974; R.C.M. 1947, 82-1914(part).

Cross-References

Rights to property, 2-15-132.

Inventory — property to be charged to receiving agency, 2-17-202.

Authority of Department of Justice to dispose of equipment, 44-1-106.

18-6-103. Highway equipment by bid. All sales of highway equipment shall be by public auction or sealed bids, and all proceeds received by the department from the sale of all material, supplies, equipment, and all other personal property of the department of transportation shall be placed in the highway account of the state special revenue fund or in the appropriate enterprise or internal service fund account.

History: En. Sec. 4, Ch. 66, L. 1923; re-en. Sec. 293.4, R.C.M. 1935; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974; R.C.M. 1947, 82-1914(2); amd. Sec. 1, Ch. 35, L. 1981; amd. Secs. 1, 3, Ch. 277, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Rights to property, 2-15-132.

Inventory — property to be charged to receiving agency, 2-17-202.

Department of Transportation, sale of personal property and printed matter, 60-4-206.

CHAPTER 7

PRINTING AND LEGAL NOTICES

Part 1 — State Printing

18-7-101. Power to contract for printing.
18-7-102. Repealed.
18-7-103. Repealed.
18-7-104. Union label.

18-7-105. Penalty.
18-7-106. Approval of purchase orders.
18-7-107. State printing, binding, and stationery work.
18-7-108 through 18-7-110 reserved.
18-7-111. Repealed.
18-7-112. Repealed.
18-7-113. Repealed.

Part 2 — Publication of Legal Notices

18-7-201. Requirements for choice of newspaper — price.
18-7-202. Lower rates permissible.
18-7-203. Folio measurement.
18-7-204. Affidavit of printer — allowance of claims.
18-7-205. Penalty for false affidavit or overcharge.

Part 3 — Control of State Printing

18-7-301. Short title.
18-7-302. Definitions.
18-7-303. Duties of committee.
18-7-304. Department to prepare standards.
18-7-305. Printed matter prohibitions.
18-7-306. Public disclosure of costs.
18-7-307. Estimation of costs.

Chapter Cross-References

County printing contracts, 7-5-2411.

Printing of voter information pamphlets, 13-27-410.

Failure to make timely payment — interest assessed on amounts due, 17-8-242.

Gifts to public servants having discretionary function in contract letting, 45-7-104.

Part 1
State Printing

Part Cross-References

Printing defined, 1-1-203.

Publication of MCA, 1-11-301.

Printing of Supreme Court decisions, 3-2-603.

Printing of House and Senate Journals and Session Laws, 5-11-202.

18-7-101. Power to contract for printing. (1) Except as provided in 1-11-301, the department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution.

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

(3) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

History: En. Sec. 6, Ch. 66, L. 1923; re-en. Sec. 293.6, R.C.M. 1935; amd. Sec. 7, Ch. 80, L. 1961; amd. Sec. 9, Ch. 261, L. 1967; amd. Sec. 43, Ch. 93, L. 1969; amd. Sec. 71, Ch. 326, L. 1974; R.C.M. 1947, 82-1916; amd. Sec. 5, Ch. 58, L. 1979; amd. Sec. 1, Ch. 265, L. 1979; amd. Sec. 1, Ch. 209, L. 1989.

Cross-References

Printing defined, 1-1-203.

Publication of MCA, 1-11-301.

Publication and arrangement of Administrative Rules of Montana, 2-4-311.

Publishing policy committee, 2-15-1017.

Board of County Printing — composition — allocation — compensation, 2-15-1811.

Printing of Supreme Court decisions, 3-2-603.

Printing of House and Senate Journals and Session Laws, 5-11-202.

State library, Title 22, ch. 1, part 2.

18-7-102. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 1, Ch. 153, L. 1935; re-en. Sec. 283.1, R.C.M. 1935; R.C.M. 1947, 82-1157; amd. Sec. 6, Ch. 58, L. 1979; amd. Sec. 2, Ch. 265, L. 1979.

18-7-103. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 254, Rev. C. 1907; re-en. Sec. 260, R.C.M. 1921; re-en. Sec. 260, R.C.M. 1935; amd. Sec. 1, Ch. 242, L. 1963; R.C.M. 1947, 82-1137(part); amd. Sec. 3, Ch. 265, L. 1979.

18-7-104. Union label. All printing for which the state of Montana is chargeable shall bear the label of the branch of the international typographical union, the allied printing trades council, or the amalgamated lithographers of America of the locality in which it is printed, except under the following conditions. Printing firms not having the use of the labels and who are desirous of presenting bids for printing as enumerated above shall be required to establish consideration as a responsible bidder as follows:

(1) As a condition to consideration as a responsible bidder, printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

(2) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions prevalent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under this section, 18-7-107, or chapter 4 of this title.

(3) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of this section, 18-7-107, or chapter 4 of this title, but nothing in these provisions shall be construed as exempting such bidders from any provisions of this section, 18-7-107, or chapter 4 of this title, and such bidders shall also be required to conform to all provisions thereof.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 254, Rev. C. 1907; re-en. Sec. 260, R.C.M. 1921; re-en. Sec. 260, R.C.M. 1935; amd. Sec. 1, Ch. 242, L. 1963; R.C.M. 1947, 82-1137(part); amd. Sec. 48, Ch. 519, L. 1983.

Cross-References

Wages and wage protection, Title 39, ch. 3.

General limitations on collective bargaining rights, Title 39, ch. 33.

18-7-105. Penalty. Any officer of the state who shall accept any printed matter for which the state is chargeable in whole or in part or who is found to have had printed matter produced, under conditions other than as set forth in chapter 4 of this title, 18-7-104, or 18-7-107 shall be subject to a fine of $50 for each and every offense.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 255, Rev. C. 1907; re-en. Sec. 261, R.C.M. 1921; re-en. Sec. 261, R.C.M. 1935; amd. Sec. 2, Ch. 242, L. 1963; R.C.M. 1947, 82-1138; amd. Sec. 49, Ch. 519, L. 1983.

Cross-References

Classification of offenses, 45-1-201.

18-7-106. Approval of purchase orders. The department may not approve a claim for printing submitted by a state officer, agency, or institution unless:

(1) a purchase order has been prepared and approved by the department prior to ordering the printing; or

(2) written approval has been given by the department to order the printing without preparation of a purchase order.

History: En. Sec. 10, Ch. 197, L. 1921; re-en. Sec. 293, R.C.M. 1921; re-en. Sec. 293, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1969; Sec. 82-1910, R.C.M. 1947; amd. and redes. 82-1916.1 by Sec. 65, Ch. 326, L. 1974; R.C.M. 1947, 82-1916.1.

Cross-References

Reappropriation of encumbered obligations at end of each fiscal year, 17-7-303.

Expenditure procedures — quarterly allotment system, 17-8-102.

18-7-107. State printing, binding, and stationery work. All printing, binding, and stationery work for the state of Montana must be printed in the state of Montana by the lowest responsible bidder if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%. If there is no responsible in-state bidder, the work may be performed by the lowest responsible bidder outside the state. Federal exemptions as specified in 18-1-102(2)(b) apply.

History: En. Sec. 46, Ch. 519, L. 1983; amd. Sec. 1, Ch. 95, L. 1987; amd. Sec. 1, Ch. 53, L. 1991.

Cross-References

Publication and sale of Montana Code Annotated, 1-11-301.

Publication of laws, 5-11-205.

The state's printing, 18-4-221.

18-7-108 through 18-7-110 reserved.

18-7-111. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 1, Ch. 178, L. 1921; re-en. Sec. 281, R.C.M. 1921; re-en. Sec. 281, R.C.M. 1935; R.C.M. 1947, 82-1154.

18-7-112. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 2, Ch. 178, L. 1921; re-en. Sec. 282, R.C.M. 1921; re-en. Sec. 282, R.C.M. 1935; R.C.M. 1947, 82-1155.

18-7-113. Repealed. Sec. 53, Ch. 519, L. 1983.

History: En. Sec. 3, Ch. 178, L. 1921; re-en. Sec. 283, R.C.M. 1921; re-en. Sec. 283, R.C.M. 1935; R.C.M. 1947, 82-1156.

Part 2

Publication of Legal Notices

Part Cross-References

County printing, Title 7, ch. 5, part 24.

18-7-201. Requirements for choice of newspaper — price. (1) In all cases and instances where any publication is required by law or is duly authorized to be made, executed, or accomplished by, for, or on behalf of the state of Montana or any of the institutions of said state or any of the departments, boards, bureaus, or commissions thereof or any of the officers, agents, or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the same shall be published in a newspaper printed and published in the state of Montana and of general bona fide and paid circulation with second-class mailing privilege and having been printed and published continuously in the state of Montana for at least 12 months immediately preceding such publication.

(2) The price for such publication and by whomsoever accomplished shall not exceed the minimum going rate charged any other advertiser for the same publication set in the same sized type and published for the same number of insertions.

History: En. Sec. 1, Ch. 157, L. 1921; re-en. Sec. 276, R.C.M. 1921; re-en. Sec. 276, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1951; amd. Sec. 1, Ch. 307, L. 1969; amd. Sec. 1, Ch. 385, L. 1973; R.C.M. 1947, 82-1149.

Cross-References

Publication of audits, 2-7-521.

Publication of notice to be once a week, 25-3-502, 25-3-503.

Effect of service by publication upon unknown persons, 25-3-505.

Notice of sale on execution, 25-13-701.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

18-7-202. Lower rates permissible. The prices, rates, and standards herein fixed and prescribed are in each instance and for every case covered by this part the maximum prices, rates, and standards. Their prescription and establishment herein shall in no case be taken as prohibiting a lesser or lower rate or price than herein fixed. Every department, institution, officer, or agent of the state shall, whenever possible, obtain a lower rate or price than is fixed herein, the equivalent of the minimum rate mentioned in 18-7-204.

History: En. Sec. 3, Ch. 157, L. 1921; re-en. Sec. 278, R.C.M. 1921; re-en. Sec. 278, R.C.M. 1935; R.C.M. 1947, 82-1151.

18-7-203. Folio measurement. (1) The following is the basis of measurement for the computation of folios in the various sizes of type, when set in a column 13 ems pica wide, and constitutes a folio within the meaning of this part:

(a) 12 lines of 6-point type;
(b) 14 lines of 7-point type;
(c) 16 lines of 8-point type;
(d) 18 lines of 9-point type; or
(e) 20 lines of 10-point type.

(2) A carefully verified actual count shall be made of the folio.

History: En. Sec. 2, Ch. 157, L. 1921; re-en. Sec. 277, R.C.M. 1921; re-en. Sec. 277, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1977; R.C.M. 1947, 82-1150.

Cross-References

Folio defined, 1-1-203.

18-7-204. Affidavit of printer — allowance of claims. No claim against the state for legal advertising or any of the publications covered by this part shall be allowed unless there is attached to said claim the certification of the publisher or printer (in the case of corporations or quasi-corporations by the business or advertising manager thereof) properly executed, setting forth that the price or rate charged the state of Montana for the publication for which claim is made is not in excess of the minimum rate charged any other advertiser for publication or advertisement set in the same sized type and published for the same number of insertions. It is hereby declared to be unlawful to make any claim against or to charge or attempt to charge the state of Montana for any publication in excess of the minimum going rate charged any other advertiser for the same publication set in the same sized type and published for the same number of insertions.

History: En. Sec. 4, Ch. 157, L. 1921; re-en. Sec. 279, R.C.M. 1921; re-en. Sec. 279, R.C.M. 1935; amd. Sec. 9, Ch. 97, L. 1961; R.C.M. 1947, 82-1152.

Cross-References

Affidavit of printer or publisher as evidence of publication, 26-1-1011.

Affidavit of publication — where filed, prima facie evidence, 26-1-1012.

18-7-205. Penalty for false affidavit or overcharge. Any person or any corporation or any firm or any quasi-corporation who shall violate any provision of this part or swear falsely hereunder or charge or attempt to charge the state of Montana in excess of the prices and rates herein fixed or in any manner circumvent or attempt to circumvent this part or aid or abet any other person, firm, corporation, or quasi-corporation in offense against this part shall be guilty of a misdemeanor and shall on conviction for the first offense be fined not more than $100 or be imprisoned in the county jail for not more than 3 months or both such fine and imprisonment, in the discretion of the court, and shall on conviction for each subsequent offense be fined not more than $300 or be imprisoned in the county jail for not more than 6 months or both such fine and imprisonment in the discretion of the court.

History: En. Sec, 5, Ch. 157, L. 1921; re-en. Sec. 280, R.C.M. 1921; re-en. Sec. 280, R.C.M. 1935; R.C.M. 1947, 82-1153.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

False swearing, 45-7-202.

Part 3
Control of State Printing

Part Cross-References

Publishing policy committee, 2-15-1017.

18-7-301. Short title. This part may be cited as the "State Printing Control Act".

History: En. Sec. 1, Ch. 646, L. 1979.

18-7-302. Definitions. As used in this part, the following definitions apply:

(1) The term "agency" as used herein includes each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) The term "committee" means the publishing policy committee created in 2-15-1017.

(3) The term "department" as used herein means the department of administration provided for in Title 2, chapter 15, part 10.

(4) The term "public document" includes any publication of a state agency meant for dissemination to the public, but does not include educational

materials published by a unit of the university system or the superintendent of public instruction, reports of the legislative auditor, travel promotion materials, standard forms, bid specifications, opinions of the attorney general, opinions of the supreme court, session laws, the Administrative Rules of Montana, Montana Code Annotated, regular periodical publications sold to the general public solely through subscription and newsstand sale, or a publication specifically exempted by the publishing policy committee when inclusion of that publication under this part is not considered in the best interests of the state.

History: En. Sec. 2, Ch. 646, L. 1979.

Cross-References

Public records, Title 2, ch. 6.

18-7-303. Duties of committee. The committee shall:

(1) adopt standards for the efficient and economical publication of public documents;

(2) review proposals for publishing of all public documents prior to publication to determine:

(a) that the publication is necessary; and

(b) that the publication meets the standards of efficient and economical publication; and

(3) at its discretion, prepare a report for submission to the legislature, detailing the savings to state government resulting from this part.

History: En. Sec. 3, Ch. 646, L. 1979; amd. Sec. 24, Ch. 112, L. 1991; amd. Sec. 24, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 at beginning of (3) inserted "at its discretion" and after "legislature" deleted "as provided in 5-11-210".

18-7-304. Department to prepare standards. The department may prepare recommended standards for state printing of public documents.

History: En. Sec. 4, Ch. 646, L. 1979.

18-7-305. Printed matter prohibitions. No agency of state government may use public funds to print or cause to be printed any public document except with approval of the committee.

History: En. Sec. 5, Ch. 646, L. 1979.

Cross-References

Power to contract for printing, 18-7-101.

18-7-306. Public disclosure of costs. All public documents caused to be printed by any agency of state government shall contain the following statement, with required information inserted, to be printed on the exterior cover of the publication: "... copies of this public document were published at an estimated cost of $... per copy, for a total cost of $..., which includes $... for printing and $... for distribution." This statement shall be printed in the same size type as the body copy of the document and shall be set in a box composed of a 1-point rule. If the committee determines that the cost of publication cannot be reasonably estimated at the time of publication, the publications shall contain the following statement on the exterior cover in lieu of the statement concerning estimated cost: "This document printed at state expense. Information on the cost of publication can be obtained by writing department of administration, Helena, Montana.

History: **En. Sec. 6, Ch. 646, L. 1979.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

18-7-307. Estimation of costs. The following factors shall be utilized in estimating cost data:

(1) printing, including all expenditures for production, whether on bid or in-house; and

(2) circulation, including all expenditures for postage and for salaries of agency or department personnel involved in distribution of the public document.

History: **En. Sec. 7, Ch. 646, L. 1979.**

CHAPTER 8

PROCUREMENT OF SERVICES

Part 1 — Consultants

18-8-101. Purpose.
18-8-102. Definitions.
18-8-103. Exemptions.
18-8-104. Use and selection of private consultants.
18-8-105. Solicitation of bids.
18-8-106. Restriction on former employees.
18-8-107 through 18-8-110 reserved.
18-8-111. Information relating to consultant studies.
18-8-112. Contract in violation void.

Part 2 — Architectural, Engineering, and Land Surveying Services

18-8-201. Statement of policy.
18-8-202. Definitions.
18-8-203. Public notice of agency requirements.
18-8-204. Procedures for selection.
18-8-205. Negotiation of contract for services.
18-8-206 through 18-8-210 reserved.
18-8-211. Coordination with other statutes.
18-8-212. Exception.

Part 1

Consultants

18-8-101. Purpose. (1) It is the intent of the legislature that this part be interpreted in a manner that assures the greatest fair competition in the selection by state agencies of private consultants under contracts covered by this part and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(2) This part is not intended to discourage the use by state agencies of private consultants if their use may reasonably be expected to result in a more

efficient and less costly operation or project. This part is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in this part have been followed.

History: En. Sec. 1, Ch. 547, L. 1981.

18-8-102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. However, the term is limited to professional consulting service work provided to an agency under an independent contract with a private consultant, but does not include the making of periodic or routine reports or the collection of routine data necessary to the functioning of a state agency or its programs or necessary for the proper monitoring of private providers of human services regulated by a state agency. The term includes only services for which payment is made from funds:

(a) that are appropriated by the legislature;

(b) that are generated by statutory functions of the agency; or

(c) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "Private consultant" means an entity that performs consulting services other than a state agency or employee.

(3) "State agency" means any state department, commission, board, office, institution, facility, or other agency, including a university system or an institution of higher education.

History: En. Sec. 2, Ch. 547, L. 1981.

18-8-103. Exemptions. This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or health care providers;

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor;

(4) consulting actuaries to the public retirement boards or the state compensation insurance fund; or

(5) private consultants employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations.

History: En. Sec. 3, Ch. 547, L. 1981; amd. Sec. 1, Ch. 215, L. 1983; amd. Sec. 1, Ch. 231, L. 1985; amd. Sec. 2, Ch. 548, L. 1989; amd. Sec. 2, Ch. 630, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 630 in (4), after "boards", inserted "or the state compensation insurance fund". Amendment effective July 1, 1993.

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

PERS — employment of actuary, 19-2-405.

Teachers' retirement — actuary, 19-20-203.

18-8-104. Use and selection of private consultants. (1) A state agency may use a private consultant only if:

(a) there is a substantial need for the consulting services; and

(b) the state agency cannot adequately perform the consulting services with its own personnel.

(2) In selecting a private consultant, a state agency shall:

(a) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

(b) when other considerations are equal, give a preference to a private consultant who is a bona fide resident of Montana as defined in 18-2-401 and whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

History: En. Sec. 4, Ch. 547, L. 1981.

18-8-105. Solicitation of bids. (1) In order to contract with a private consultant, a state agency shall establish a bid list in its central office. Any private consultant who desires to submit bids to that agency to provide consulting services may request in writing the agency place him on the agency's bid list.

(2) Whenever it is reasonably foreseeable that a proposed contract for private consultant services will exceed $5,000, the state agency shall notify all private consultants who have requested to be placed on the agency's bid list. The notice shall contain the following:

(a) a notice of invitation for offers of consulting services;

(b) the name and address of the person within the agency to be contacted by a private consultant wishing to make an offer;

(c) the closing date for receipt of offers of consulting services;

(d) the procedures and specifications upon which the agency will award the contract for consulting services; and

(e) any other information that the agency believes pertinent.

(3) In addition to the notification required in subsection (2), the state agency, in its discretion, may solicit bids for consultant services by advertisement or other means.

(4) An agency need not follow the provisions of this section in bona fide emergency situations.

History: En. Sec. 6, Ch. 547, L. 1981; amd. Sec. 1, Ch. 509, L. 1983.

18-8-106. Restriction on former employees. A principal or officer of a consulting firm or an individual who offers to perform a consulting service for a state agency and who has been employed by the agency or by another state agency at any time during the 2 years preceding the making of the offer shall disclose in the offer the nature of the previous employment with the agency or the other state agency and the date of termination of the employment.

History: En. Sec. 7, Ch. 547, L. 1981.

18-8-107 through 18-8-110 reserved.

18-8-111. Information relating to consultant studies. (1) After a state agency contracts to use a private consultant, the state agency shall, upon request, supply the legislative fiscal analyst and the office of budget and program planning with a brief resume of the results accomplished by the private consultant.

(2) Copies of all documents, films, recordings, or reports of intangible results shall be filed with the central office of the state agency or repository designated by the state agency.

(3) As part of the biennial budgetary hearing process conducted by the legislative fiscal analyst and the office of budget and program planning, a state agency shall upon request supply the legislative fiscal analyst and the office of budget and program planning with reports on what action was taken in response to the recommendations of any private consultant employed by the state agency.

History: En. Sec. 5, Ch. 547, L. 1981.

18-8-112. Contract in violation void. (1) If a state agency contracts to use a private consultant without complying with the requirements of 18-8-105 or if a person contracts to perform a consulting service for a state agency without complying with the requirements of 18-8-106, the contract is void.

(2) If a contract is void under this section, the state or state agency may not make any payments under the contract from any state or federal funds held in or outside the state treasury if violation of this part was caused by the consultant.

(3) If a contract is void under this section because of a violation of this part by the state agency, the state shall pay the consultant for all work performed up to the date that the consultant is informed in writing of the violation by the state agency.

History: En. Sec. 8, Ch. 547, L. 1981.

Part 2

Architectural, Engineering, and Land Surveying Services

18-8-201. Statement of policy. The legislature hereby establishes a state policy that governmental agencies publicly announce requirements for architectural, engineering, and land surveying services and negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices.

History: En. Sec. 1, Ch. 51, L. 1987.

18-8-202. Definitions. Unless the context clearly indicates otherwise, the following definitions apply to this part:

(1) "Agency" means a state agency as defined in subsection (7), local agency as defined in subsection (4), or special district as defined in subsection (6).

(2) "Architectural, engineering, and land surveying" means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.

(3) "Licensed professional" or "licensed architect, professional engineer, professional land surveyor" means a person providing professional services who is not an employee of the agency for which the services are provided and who is exempt under 18-8-103.

(4) "Local agency" means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.

(5) "Person" means an individual, organization, group, association, partnership, firm, joint venture, or corporation.

(6) "Special district" means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, sewer districts, and transportation districts.

(7) "State agency" means a department, agency, commission, bureau, office, or other entity or authority of state government.

History: En. Sec. 2, Ch. 51, L. 1987.

18-8-203. Public notice of agency requirements. Each agency shall publish in advance its requirement for professional services. The announcement must state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by:

(1) publishing an announcement on each occasion when professional services provided by a licensed professional are required by the agency; or

(2) announcing generally to the public its projected requirement for any category or type of professional services.

History: En. Sec. 3, Ch. 51, L. 1987.

18-8-204. Procedures for selection. (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

(i) the qualifications of professional personnel to be assigned to the project;

(ii) capability to meet time and project budget requirements;

(iii) location;

(iv) present and projected workloads;

(v) related experience on similar projects; and

(vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

History: En. Sec. 4, Ch. 51, L. 1987.

18-8-205. Negotiation of contract for services. (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price which the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature thereof.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

History: En. Sec. 5, Ch. 51, L. 1987.

18-8-206 through 18-8-210 reserved.

18-8-211. Coordination with other statutes. (1) This part need not be complied with by an agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved. Nothing in this part relieves the contracting authority from complying with applicable law limiting emergency expenditures.

(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this part.

(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112 applies to this part, except that the agency shall select its proposed list of three architects or consulting engineers in accordance with this part prior to submission to the department of administration.

(4) The exception for services estimated to cost less than $5,000 in 18-8-105 applies to this part.

History: En. Sec. 6, Ch. 51, L. 1987.

18-8-212. *(Temporary)* **Exception.** (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed $10,000 may contract for those professional services by direct negotiation. The procurement of architectural, engineering, and land surveying services for the honors college program building authorized in 20-25-440 is exempt from the provisions of this part.

(2) An agency may not separate service contracts or split or break projects for the purpose of circumventing the provisions of this part. *(Terminates July 1, 1995—sec. 5, Ch. 22, L. 1993.)*

18-8-212. *(Effective July 1, 1995)* **Exception.** (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed $10,000 may contract for those professional services by direct negotiation.

(2) No agency may separate service contracts or split or break projects for the purpose of circumventing the provisions of this part.

History: En. Sec. 7, Ch. 51, L. 1987; amd. Sec. 3, Ch. 22, L. 1993; amd. Sec. 7, Ch. 518, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 22 in (1) inserted second sentence exempting procurement of services for the honors college program building; and made minor changes in style. Amendment effective February 8, 1993, and terminates July 1, 1995.

Chapter 518 in (1) increased "$5,000" to "$10,000"; and made minor changes in style. Amendment effective April 24, 1993.

CHAPTERS 9 AND 10

RESERVED

CHAPTER 11

STATE-TRIBAL COOPERATIVE AGREEMENTS

Part 1 — General Provisions

18-11-101. Short title — purpose.
18-11-102. Definitions.
18-11-103. Authorization to enter agreement — general contents.
18-11-104. Detailed contents of agreement.
18-11-105. Submission of agreement to attorney general.
18-11-106. Repealed.
18-11-107. Filing of agreement.
18-11-108. Revocation of agreement.
18-11-109. Authorization to appropriate funds for purpose of agreement.
18-11-110. Specific limitations on agreements.
18-11-111. Validity of existing agreements.
18-11-112. Revenue account — administrative account — distribution of revenue.

Chapter Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

Part 1

General Provisions

18-11-101. Short title — purpose. (1) This chapter shall be known and may be cited as the "State-Tribal Cooperative Agreements Act".

(2) It is the intent of the legislature that this part be used to promote cooperation between the state or a public agency and a sovereign tribal government in mutually beneficial activities and services.

(3) It is the goal of the legislature to prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.

History: En. Sec. 1, Ch. 309, L. 1981; (2), (3)En. Sec. 1, Ch. 625, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] [enacting subsections (2) and (3) of 18-11-101] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

18-11-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Public agency" means any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

(2) "Tribal government" means the officially recognized government of any Indian tribe, nation, or other organized group or community located in Montana exercising self-government powers and recognized as eligible for services provided by the United States to Indians because of their status as Indians.

History: En. Sec. 2, Ch. 309, L. 1981.

18-11-103. Authorization to enter agreement — general contents. (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to:

(a) perform any administrative service, activity, or undertaking that a public agency or a tribal government entering into the contract is authorized by law to perform; and

(b) assess and collect or refund any tax or license or permit fee lawfully imposed by the state or a public agency and a tribal government and to share or refund the revenue from the assessment and collection.

(2) The agreement must be authorized and approved by the governing body of each party to the agreement. If a state agency is a party to an agreement, the governor or the governor's designee is the governing body.

(3) The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

(4) (a) Prior to entering into an agreement on taxation with a tribal government, a public agency shall provide public notice and hold a public meeting on the reservation whose government is a party to the proposed agreement for the purpose of receiving comments from and providing written and other information to interested persons with respect to the proposed agreement.

(b) At least 14 days but not more than 30 days prior to the date scheduled for the public meeting, a notice of the proposed agreement and public meeting must be published in a newspaper of general circulation in the county or counties in which the reservation is located.

(c) At the time the notice of the meeting is published, a synopsis of the proposed agreement must be made available to interested persons.

History: En. Sec. 3, Ch. 309, L. 1981; amd. Sec. 2, Ch. 625, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 625 inserted (1)(b) authorizing agreement to collect refund of tax or fee and to share refund; in (2) inserted second sentence appointing Governor or designee as governing body; inserted (4) requiring public notice and meeting; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

18-11-104. Detailed contents of agreement. (1) The agreement authorized by 18-11-103 must specify the following:

(a) its duration;

(b) the precise organization, composition, and nature of any separate legal entity created by the agreement;

(c) the purpose of the agreement;

(d) the manner of financing the agreement and establishing and maintaining a budget for the agreement;

(e) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination;

(f) provision for administering the agreement, which may include creation of a joint board responsible for administration;

(g) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and

(h) other necessary and proper matters.

(2) If an agreement involves law enforcement, it must also include:

(a) the minimum training standards and qualifications of law enforcement personnel;

(b) the respective liability of each public agency and tribal government for the actions of law enforcement officers when acting under the provisions of an agreement;

(c) the minimum insurance required of both the public agency and the tribal government; and

(d) the exact chain of command to be followed by law enforcement officers acting under the provisions of an agreement.

(3) If an agreement involves the assessment and collection or refund of a similar tax or license or permit fee by the state or a public agency and a tribal government, it must also include:

(a) the procedure for determining the amount of revenue to be shared by the state or a public agency and the tribal government;

(b) the administrative procedures for collection of the shared revenue;

(c) the minimum insurance or bonding, if any, required by the state or a public agency or the tribal government;

(d) a statement specifying the administrative expenses, if any, to be deducted pursuant to 18-11-112 by the collector of the tax or license or permit fee;

(e) a statement that the state or a public agency or the tribal government collecting the tax or license or permit fee is subject to an audit report by a mutually agreed upon auditor of the revenue collected and administrative expenses;

(f) a statement that the state or a public agency and the tribal government will cooperate to collect only one tax and will share or refund the revenue as specified in the agreement;

(g) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement; and

(h) a statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement.

History: En. Sec. 4, Ch. 309, L. 1981; amd. Sec. 3, Ch. 625, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 625 inserted (1)(h) concerning other matters in agreement; inserted (3) specifying content of agreement involving tax or fee; deleted (9) that read: "(9) any other necessary and proper matters"; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

18-11-105. Submission of agreement to attorney general. (1) As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under this chapter unless he finds it is not in proper form or does not meet the requirements set forth in this chapter or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the public agency and tribal government concerned, specifying the reasons for his disapproval.

(3) If the attorney general does not disapprove the agreement within 30 days after its submission to him, it shall be considered approved by him.

History: En. Sec. 5, Ch. 309, L. 1981.

18-11-106. Repealed. Sec. 2, Ch. 38, L. 1985.

History: En. Sec. 6, Ch. 309, L. 1981.

18-11-107. Filing of agreement. (1) Within 10 days after approval by the attorney general and signature of the parties, an agreement made pursuant to this chapter must be filed with:

(a) the area office of the bureau of Indian affairs of the United States department of the interior having trust responsibility for the tribe that is party to the agreement or its successor agency;

(b) each county clerk and recorder of each county where the principal office of one of the parties to the agreement is located, except as provided in (2) of this section;

(c) the secretary of state; and

(d) the affected tribal government.

(2) If a party to the agreement is a state agency, the agreement need not be filed with the county clerk and recorder for Lewis and Clark County.

History: En. Sec. 7, Ch. 309, L. 1981; amd. Sec. 1, Ch. 38, L. 1985.

18-11-108. Revocation of agreement. An agreement made pursuant to this chapter is subject to revocation by any party upon 6 months' notice to the other unless a different notice period of time is provided for within the agreement. No agreement may provide for a notice period for revocation in excess of 5 years.

History: En. Sec. 8, Ch. 309, L. 1981.

18-11-109. Authorization to appropriate funds for purpose of agreement. Any public agency entering into an agreement pursuant to this chapter may appropriate funds for and may sell, lease, or otherwise give or supply material to any entity created for the purpose of performance of the agreement and may provide such personnel or services therefor as is within its legal power to furnish.

History: En. Sec. 9, Ch. 309, L. 1981.

18-11-110. Specific limitations on agreements. Nothing in this chapter may be construed to authorize an agreement that:

(1) is not permitted by federal law. However, the parties are encouraged to deal with substantive matters and enforcement matters that can be mutually agreed upon, but no such agreement may be considered to affect the underlying jurisdictional authority of any party unless expressly authorized by congress.

(2) authorizes a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country; or

(3) authorizes a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws.

History: En. Sec. 10, Ch. 309, L. 1981; amd. Sec. 1, Ch. 81, L. 1985.

18-11-111. Validity of existing agreements. (1) Except as provided in subsection (2), this chapter does not affect the validity of any agreement entered into between a tribe and a public agency prior to July 1, 1981.

(2) However, any such agreement must satisfy the requirements of this chapter no later than July 1, 1983.

History: En. Sec. 11, Ch. 309, L. 1981.

18-11-112. Revenue account — administrative account — distribution of revenue. (1) The revenue collected by the state, a public agency, or a tribal government under a state-tribal cooperative agreement and the administrative expenses, if any, deducted under subsection (2) from the total revenue collected must be deposited in separate special revenue accounts.

(2) Administrative expenses deducted by the state, a public agency, or a tribal government for collection of revenue may not exceed the actual cost of collecting the revenue on a reservation or 5%, whichever is less. Money from an administrative account may be expended only for the purpose of administering the tax or fee imposed under the state-tribal cooperative agreement or for paying the costs incurred in terminating the agreement.

(3) Except for administrative expenses, if any, deducted under subsection (2), revenue collected by a public agency under a state-tribal agreement must be deposited in separate special revenue accounts and must be disbursed as provided for in the agreement. If a public agency that is a party to an agreement is a local government, the agreement must provide for the disposition of revenue.

(4) Money deposited in a state administrative expenses account and in a state special revenue account is statutorily appropriated, as provided in 17-7-502, to the department or public agency that is a party to a state-tribal cooperative agreement under 18-11-103, for the purpose of paying administrative expenses or paying to a tribe its portion of the tax or fee.

(5) If a tax or license or permit fee is collected or refunded pursuant to a state-tribal cooperative agreement, each party must receive its share as

provided in the agreement, notwithstanding any contrary state statutory, public agency ordinance, or tribal ordinance distribution formula. For distribution of the remainder, the state statutory, public agency, or tribal distribution formula must apply as if the amount remaining after each party to the agreement receives its share were the total revenue collected from the tax or license or permit fee.

History: En. Sec. 4, Ch. 625, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

provides in the agreement, notwithstanding any contrary state statutory, public agency ordinance, or tribal law or distribution formula. For distribution of the remainder, the state statutory, public agency, or tribal distribution formula must apply as if the amount remaining after each party to the agreement receives its share were the total revenue collected from the tax or license or permit fee.

History: En. Sec. 4, Ch. 625, L. 1993.

Compiler's Comments [illegible] is July 1, 1993, and applies to agreements

Effective Date — Applicability: Section [illegible] entered into before or after July 1, 1993."

Ch. 625, L. 1993, provided: [illegible]

DOES NOT CIRCULATE